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**TRANSCRIPT
OF PROCEEDINGS**

PRODUCTIVITY COMMISSION

**REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL
PROFESSION**

**PROF J. SLOAN, Presiding Commissioner
DR N. BYRON, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON THURSDAY, 22 JUNE 2000, AT 9.29 AM

Continued from 21/6/00

PROF SLOAN: Welcome, everyone. My name is Prof Judith Sloan and this my fellow commissioner, Dr Neil Byron. We now commence the final day of public hearings of the review of legislation regulating the architectural profession, held on Thursday, 22 June 2000 in Melbourne. I'm not sure if you were all here yesterday. Let me just run through some of the housekeeping rules. We'll ask the people who are there on the program to come to the stand - "the stand" sounds - we try and keep this as informal as possible - and to introduce yourself, and then there's some time to make a short presentation and with the time allotted for there to be a sort of question and answer session.

As I say, we do try to keep it as informal as possible, but because all the proceedings are transcribed it's not possible to take interjections or comments from the audience because we then don't have any identity of the person speaking. I must admit I think I've fallen into the trap of talking to the audience, so I'll try and resist that temptation again.

In terms of some other housekeeping rules, in some ways it's been an interesting process for us. Some might say that aspects of the public hearings have been quite good theatre. It's not really the play I would have chosen to go to, but I think by and large it doesn't really help anyone if the participants spend too much time attacking the Productivity Commission. We've been given a job to do by the treasurer under the auspices of the National Competition Policy, and we're going about that in accord with absolutely normal processes. So, as they say, it's probably better to play the ball rather than the man.

The other point, I suppose, is that this inquiry is not about the role of architecture, and we seem to get sort of distracted or meander off into discussion about the role of architecture. It's really much more narrowly, and probably boringly, focused on the role of the Architects Acts and the extent to which, if they contain anticompetitive elements, the net costs to the community outweigh or are outweighed by the benefits to the community, and the secondary issue of whether there are alternative more effective and efficient means to achieving the objectives of the act. So it is much more narrowly focused and therefore broad discussions about the role of architecture in Australia and the world probably aren't very useful.

Just my final point is that again I think a not very useful avenue of discussion involves bagging the competitors of the architects. I think we've really had too much - how shall I say it - negative comment, for example, about the building designers when in fact really it's about trying to establish a rational framework in which all building service providers can live happily and the public can be protected as well.

I think it is quite important to try and keep to the time frame as much as possible, and as a consequence of that it's generally much better to speak to your submission rather than to read anything, but bear in mind we don't mark you down for reading bits and pieces. So Brian Morison et ors are here from the Building Designers Association of Victoria - is that five?

MR MORISON: Yes, it is, five. That's correct.

PROF SLOAN: All right. When you get there you'll need to in turn introduce yourselves and state your affiliation.

MR HAMILTON: Sean Hamilton, Building Designers Association, immediate past president.

MR HOARE: Geoff Hoare, Building Designers Association, deputy president.

MR ISEPPI: Tony Iseppi, Building Designers Association, current president.

MR McLAUGHLAN: Robert McLaughlan, Building Designers Association, past president, current national director.

MR MORISON: Brian Morison, executive officer of the Building Designers Association of Victoria.

PROF SLOAN: Thanks very much for coming and welcome. Am I right in saying that you're all building designers?

MR MORISON: Other than myself.

PROF SLOAN: Other than yourself?

MR MORISON: Yes.

PROF SLOAN: What do you call yourself?

MR MORISON: I'm the executive officer of the association and so I provide the secretarial support to - - -

PROF SLOAN: Do they call you a lay person?

MR MORISON: Sometimes.

PROF SLOAN: Thanks very much. Are you going to speak, Brian, initially?

MR MORISON: Yes.

PROF SLOAN: We have got till 10.30, so I might, just to foreshadow, talk to you a little bit about your individual backgrounds and some of the issues associated with this which have come up. Okay, Brian.

MR MORISON: We provided to you a summary submission and we'd certainly like to speak to the various points that we've made in that summary submission. First

and

foremost, the Building Designers Association of Victoria does in fact support the recommendation that has been made by the Productivity Commission in the sense that all of the various architects acts should in fact be repealed and that the appropriate time frame notification be implemented.

However, the association also recognises that the Architects Act in Victoria was not one of the instruments that was under review by the Productivity Commission, and we'd like to indicate our disappointment at that fact. We acknowledge that it's not anything to do with the Productivity Commission, but we want to formally state that we would have preferred to have seen Victoria embraced within the terms of reference of this particular Productivity Commission report.

Thirdly, the association would also indicate that it intends to put the Victorian government on notice that it does in fact support the Productivity Commission report and that furthermore it would ask the Victorian state government to be involved in a consideration of the final report when it's released.

I suppose the first point that we make though, is that whilst we clearly support the notion of repealing the legislation in terms of the Architects Act, we don't support the notion of total self-regulation. We believe that the building and construction industry is an industry where there is a need to have in fact some compulsory registration requirement, and we best see that being handled by way of legislative underpinning. I suppose one of the difficulties - - -

PROF SLOAN: Can I just interrupt you there. Would you say whether the case with the engineers fits into your model?

MR MORISON: Yes, it does, in the sense that - I suppose in one sense we're being a little parochial in looking at our own legislation in Victoria.

PROF SLOAN: Don't worry about that.

MR MORISON: The reason why we say that about engineers is that, if you take into account the Building Act 1993, it embraces all building practitioners. It embraces quantity surveyors, building surveyors, building inspectors, both builders in the two particular sectors, engineers and building surveyors, building inspectors and of course draftspersons. So you have the rather interesting position where in Victoria you have a Building Act that embraces all the key players in the industry; however, the architects sit to one side with their own specific piece of legislation. Our view, therefore, is that we believe that there should be a repeal of the legislation but an embracing of the architects within the purview of the Building Act itself.

PROF SLOAN: As part of that though, presumably, the Architects Board goes?

MR MORISON: Yes, absolutely.

PROF SLOAN: So they would come under the more generic - what's that called,

the Building - - -

MR MORISON: It's called the Building Practitioners Board, and that particular board has representation of all of those various facets of the building and construction industry. So I think the beauty of that forum is that it does embrace all of the key stakeholders in the industry, allows an enormous amount of cross-pollination of ideas that just simply embrace, to the benefit of the building and construction industry and obviously of the consumer.

PROF SLOAN: You don't have a fear that that might be a kind of backdoor means of the regulating practice, where the Building Act will start to specify that an architect must do certain things?

MR MORISON: Certainly if you look at the provisions of the Architects Act in relation to the ownership or structure or the firm or the practice, the issues of advertising are matters that have never been placed on the agenda with the other industry groups or industry sectors. So I suppose there's always that fear.

PROF SLOAN: No, I'm making a different point, that if you put the architects in under the Building Act - because don't forget the Building Act also says that - it does license certain activities, does it not?

MR MORISON: Correct.

PROF SLOAN: So a licensed electrician must do certain work and an engineer etcetera etcetera. Is not the possibility that the building designers might end up getting squeezed because there might end up being some regulation of practice which says that an architect must be, for example, involved in something like the Queensland situation, over 20 metres and the like? Is that not a fear?

MR MORISON: There is the potential for that scenario, but I think it's probably an unlikely position. But it's clearly a possibility that the architects may be able to lobby a position within the board to go down that trail. But at the end of the day that's, I suppose, a potential risk. From the point of view of the building designers - - -

PROF SLOAN: Is that always there anyway? It's not - - -

MR MORISON: Yes, it always is.

PROF SLOAN: It's not necessarily heightened by them going in under the Building Act?

MR MORISON: No. I think it is probably fair to say that the architects would like to see a limiting of the services or the scope of services that are provided by building designers, so that has always been out there in the public arena. If they were to then be embraced by the Building Practitioners Board and endeavour to use that, then obviously we're going to have to have some sound debate and some considerable

discussion as to whether that could in fact be imposed.

Given the nature of the board and, I think more importantly, what its objects are, which is really to look at the conduct and practice and also to monitor and supervise registration processes, it could well be argued that it might well be outside their objects in terms of the legislation to be able to impose those types of conditions.

PROF SLOAN: So what are the kinds of advantages of that? Let me lead the question, in a sense. It seems to me that the Building Practitioners Board and the registration process has a more sort of current competency focus, does it not?

MR MORISON: Yes, I'd agree with that.

PROF SLOAN: So it's not based on a one-off registration process; you have to - - -

MR MORISON: Sorry, I misunderstood you. That in fact is perhaps one of the deficiencies that we would see in the current legislation in Victoria. If there's a real role for industry associations and professional institutions to play, it's in the continuing professional development arena, and you're quite right: at the moment the Building Practitioners Board licensing system in Victoria just allows you to roll over your registration simply by paying the appropriate registration fee and ensuring you satisfy the insurance requirements. We would argue that there is a next step that needs to be taken, that as always a precursor to your having your registration renewed you must demonstrate that you've been involved in continuing professional development practice.

PROF SLOAN: But presumably the accreditation process itself is many and varied, so they essentially have approved accrediting arrangements which differ between the different groups.

MR MORISON: Yes, they do. There's no centralised system and certainly it's not by the board.

PROF SLOAN: But they basically subcontract, yes.

MR MORISON: Exactly. Each of the groups would have their own views about what they perceive to be continuing professional development. We would argue, though, that the board should play a role in that and be able to in fact determine what they perceive to be appropriate criteria, given that they're the ones who are actually carrying out the monitoring of the practice and the conduct of professionals. They're the ones who can build up very significant trend lines as to where the advantages and disadvantages are of each discipline.

PROF SLOAN: Although you probably would want to run with some national accreditation system, given our focus - yes. That's where - I don't think you were here yesterday, but the AACA potentially could provide that role. They in effect do that at the moment - provide a national accreditation system for architects. So they're

sort of the obvious agency to undertake that role, yes.

MR MORISON: And it certainly makes sense to see it in a national context rather than simply a state-by-state crunch.

PROF SLOAN: Okay. Keep going.

MR MORISON: Fine. I suppose the other point we wanted to highlight in putting the argument that self-regulation doesn't necessarily work, is that you can look at some other industry sectors and see self-regulation that appears to work. In the building construction industry we are dealing with, I suppose, an entirely different beast. It's a very fragmented industry. It's made up, as we've indicated, of a number of facets of people involved in the industry who are required very clearly to have to interrelate with each other. One of the difficulties, regrettably in the system, is that if in fact you have complete free competition, the notion that you immediately result in lowering of prices are that you immediately end up improving service and improving innovation, in our view is only one side of that coin.

There is the other side that says - and regrettably it's common in the industry - irrespective of whether there's registration or not, where the industry tends to be very cutthroat in terms of the tendering process. Overarching the building construction industry is the tendering notion. That regrettably has resulted in the cutting of prices which in turn in our view does in fact have an impact upon quality control and does also have an impact upon innovation. So in our view it's not necessarily true that by having a totally self-regulated system without any government legislation underpinning, necessarily creates the classical notions or the classical benefits that emanate from competition. We believe it is important that it's understood just what is the nature of the industry and indeed, therefore, what is the role that particularly architects play within that industry.

I suppose that's our concern, that we see architects as being key players, key stakeholders in the building construction industry but that they are separated out in the process. It seems to me that we can't find - in our mind's eye - any good or valid reason why architects would hold a position that puts them outside the mainstream of the building construction industry. If anyone viewed last night's *In the Mind of the Architects* on the ABC, it's clear if architects believe that their role is that of the artist and are involved purely in their mind's eye in the art of architecture, as opposed to being someone who's a key player in the building industry, then I think they've got as choice one way or the other. They either see themselves as a key stakeholder within the industry, and if they do they should be under the purview of the Building Act, or if they don't and they see themselves as true artists, then in many respects I think they would find it fairly difficult to argue with the Productivity Commission's recommendations. It seems to me that there has to be a determination as to where they really do perceive themselves sitting in the structure of the industry itself.

PROF SLOAN: I think that's been part of our problem, because you don't register artists.

MR MORISON: Exactly. To go on, one of the other areas of course that we support the notion of bringing architects within the Building Act is that it brings up the points that have been raised by the report itself that it does reduce the duplication of registration resources and infrastructure. It does, in our view, have the ability to achieve a greater degree of uniformity for benefit of the building construction industry. It certainly in our mind's eye achieves a more transparent registration procedure and, finally, we do believe that it has the potential to break down that confusion that is created in terms of the consumer's position.

One of our major concerns, apart from the fact of seeing the architects not embraced within the purview of the Building Act, is of course this issue of the use of the derivatives, and particularly the term "architectural". We note in your report that you make the observation that it may not have a great impact in terms of being anticompetitive, but certainly it seems to be a constant threat that is imposed upon draftspersons. We carried out a survey and it was interesting to see that in that survey that related to both non-members and members of the association that their major gripe was the very rigorous approach that the Architects Registration Board adopted to anyone who used the term "architectural". Instances of where it wasn't even a fault of a practitioner - one classic example of this particular practitioner's work being advertised because the house was being sold and the reporter had done just a little preview and referred to the house as being "architect-designed".

The Architects Registration Board attacked that particular practitioner for that, and the practitioner found themselves in the invidious position of having to write to the editor of that particular newspaper to say to the Architects Registration Board that under no circumstances had that particular draftsperson indicated that they were an architect, that it was indeed the fault of the reporter concerned. But again the response by the Architects Registration Board was, "If you ever allow that sort of activity to happen again then we will prosecute you." There are a myriad of those type of examples.

PROF SLOAN: Another point of view, to give them some due - I mean, I think the attitude varies across the states. Some would say that even if they don't want to do it, in a sense the act insists they do. So they're caught in a bit of a bind. I mean, one chairman of the board said - because there have been some silly cases. He will say to me privately, "Of course they're silly cases but they are charged with a piece of legislation and therefore they're a bit caught in that too." Others of course are quite zealous, I'm not denying that.

MR MORISON: We would agree with that, other than to say though - and it becomes a little too subjective. It depends on how that board - and it doesn't necessarily apply just to Victoria, we would think right around the nation - approached that matter. It does, rightly or wrongly, create a perception with building designers that it is an attack upon them and it is an attack that's built more in their eyes as one of being anticompetitive and necessarily just simply enforcing the provisions of the Architects Act.

PROF SLOAN: It's interesting that the derivatives are not universally regulated overseas. I mean, in the UK the derivatives are not regulated and in New Zealand we heard that it's not regulated either. So there are some precedents for that. It's small "architectural", isn't it - small "a" architectural - in a sense, that people are wanting to use.

MR MORISON: I suppose, commissioners, that really is where I could possibly stop and let my colleagues make any other comments they would like to make in support of those essential principles that we're making. I suppose to summarise, yes, we support the repeal of the acts, but perhaps for a slightly different reason than the Productivity Commission because we say a need to embrace them under an already existing structure that appears to be working well for the building construction industry, and we can't understand why the architects see themselves outside that particular legislation.

I suppose one other point I should stress is that our view is that clearly under the Building Act there is a greater requirement in terms of performance audits to be accountable. We don't see that same level of accountability built in within the Architects Act itself. So again you have a group of building practitioners required to be accountable at a variety of levels but don't necessarily apply to that of that architect. It's not a criticism in the sense that architects themselves may well believe that they have an in-built accountability. But in this instance there is legislation that clearly allows independent investigators to audit each and every building practitioner and that's certainly not the case, as we understand it, in the Architects Act.

DR BYRON: Could you just clarify - those audits, are they audits of the practitioner's work or audits of their compliance for the terms of renewal and registration?

MR MORISON: It's a combination of both. It's a compliance to ensure that there is no breach of the Building Act and it's also looking at in fact whether they demonstrate professional conduct in their practice generally. So it embraces looking at their administrative processes, whether they carry out contracts, whether they in fact have appropriate authorities to act. So it is, I suppose, an audit generally of how they perform as a building practitioner in a professional sense.

PROF SLOAN: If you want the derivatives deregulated, so to speak, what's your view then though on the legal reservation of the title "architect"?

MR MORISON: Our view is that we don't really have a difficulty with the fact that someone should have the right to call themselves an architect because they have been appropriately qualified as such. That's really not our beef. Obviously my colleagues could speak for themselves. None wish to be in a position where they want to use the term "architect"; they do, however, wish to be able to describe themselves as practitioners who can provide architectural services. I know there's been an interesting debate about what that truly then means. It might be a backdoor way of

calling yourself an architect, but we would deny that that's the intention. But certainly we would want the opportunity to be able to describe who we are and what we are without the need for us - and without us wanting to take away from the architects their right to continue to use what is an accurate title.

PROF SLOAN: I suppose the only other problem with - I mean, at the moment there's a Building Act in Queensland and Victoria. I think there's proposed to be one in - - -

DR BYRON: In Tasmania. They've had a first reading speech.

PROF SLOAN: - - - Tasmania soon.

MR MORISON: Yes.

PROF SLOAN: Is your strategy contingent on there being building acts? I mean, bear in mind we've got this sort of national problem. What happens in a state that doesn't have a building act?

MR MORISON: I think our strategy is contingent upon the fact that there does have to be similar legislation or uniform legislation around the states, otherwise it can't work. It's all very well for us to be parochial - - -

PROF SLOAN: I mean, I think it's coming but as we understand it, as we're told, that I think even in my state of South Australia they're thinking of bringing in a Building Act. Can we just go very briefly through your four colleagues? So how did you all very briefly come to be building designers?

MR HAMILTON: Upon gaining an academic qualification in architectural drafting and a certificate that says - claims architectural - I just went through the natural process of being gainfully employed by architects and then subcontracting to then running my own practice employing architects. I don't have the academic qualifications or training to describe myself as an architect, but I do believe I provide an architectural type of service.

PROF SLOAN: Is that pathway fairly common, your one, through architectural drafting?

MR HAMILTON: Definitely. In fact people like me - the others, so to speak - would be holding down the majority of the domestic market share for building design right around the country.

PROF SLOAN: So if there were no legal reservation of the title "architect", would you want to call yourself architect?

MR HAMILTON: No, certainly not. I want to be able to use derivatives of that word appropriately and with respect to the architects. I certainly have no desire to

describe myself as an architect. I'm not an architect and unless I decide to go through a more rigorous training regime through another form of academic course or whatever, then I don't believe I can call myself an architect.

PROF SLOAN: Where's your market niche, in the residential sector mainly?

MR HAMILTON: No, I have about an equal share of residential and industrial work up to the value - for my practice - around about, a maximum of \$5 million in a project. If we could just elaborate on the audit process, that audit process I think is driven by the need for consumer protection. I don't think - we are all subjected to being audited by an external body. They're not going to come and audit our ability as creative building designers. I think they're really after protecting it.

MR HOARE: I guess my background is the same as Sean's - architectural draftsman; worked for a number of architectural practices; started my own practice. We work within the commercial and institutional hospitality fields. We do very little residential work. We compete solely with architects and we compete in a number of areas. We compete in design, we're based on design. We sometimes compete on fees and we sometimes lose on fees. We are building designers, we're not architects. We provide architectural design and documentation services. Most of our clients come to us because they have seen our work, particularly in the hospitality field and commercial field. They like what we do, feel they can work with us and they engage us.

PROF SLOAN: Do you think that's generally how the market works?

MR HOARE: Probably commercially, yes; residentially, perhaps not. Residential clients are cautious, I think, very much so, and their needs are probably simple, in a design sense, and I think that's one reason why a lot of residential clients end up with building designers rather than architects. I think the clients can't see the need for an architect on their project, their needs are so simple, and they just want what mum and dad had and that's that, you know, so their needs are pretty simple.

PROF SLOAN: Better than mum and dad's, surely. Tony?

MR ISEPPI: I came pretty much the same route as Geoff. I started off as an engineering student, got dissatisfied with that. I then started work with a large government instrumentality. I did eight years of night school studying architecture actually and worked in their architecture area as part of a design team, even though I wasn't qualified, the only non-qualified person; looked after probably in excess of \$2 billion worth of work. From there, rather than finish my qualifications, I got an itch for construction work, being involved in construction, and basically that's where our industry has sort of stayed, we've stayed in that design area. From time to time, even currently, our architects have worked for us, with interior designers also. So our force of work basically is in the commercial, local government - we do a lot of local government work - small property groups. We look after a total package. I guess my background comes from the bush and I'm used to doing a lot of things. We've always

taken a very broad brush approach to what we do, so we currently get involved in development, in acquiring properties, placement, the design of it, the relocation of it.

PROF SLOAN: But you don't want to call yourself an architect?

MR ISEPPI: I made that choice 20 years ago. I'd left two subjects short of a degree.

PROF SLOAN: You should go back.

MR ISEPPI: Not interested. I have too much fun this way. The reason I left is, I wanted a broader perspective to work from and I didn't want to be restricted by that.

PROF SLOAN: You probably could have got registered as an architect if you'd wanted to.

MR ISEPPI: I could have. In those days you could, yes.

PROF SLOAN: We had a character yesterday who actually never finished his architecture degree but actually is a registered architect.

MR ISEPPI: I know many other people that have actually completed their degrees and were taken in by big construction firms and people didn't give them that actual experience in an architectural practice that have never registered and have stayed outside the - - -

PROF SLOAN: Is that an anomaly, because what do they call themselves? They can't legally call themselves architects.

MR ISEPPI: They don't. They just become designers. I guess in many ways - because I've been around a bit longer than last week - - -

PROF SLOAN: We all have.

MR ISEPPI: - - - but in those days, you were just a ghost in the industry and you were known for your reputation and what you delivered. I guess that's one of the things I thank the architects for, that it's makes us honest and it makes us very mindful of what we have to deliver because if we don't deliver, we've got nothing to stand by. I think the use of the word "architectural" is quite stupid because I could start producing picket fences or plastic gargoyles tomorrow and call myself a manufacturer of architectural products. I can do eight years' night study and 25 years in direct competition with architects and I can't use the word "architectural service". The marketplace are not even aware of that.

PROF SLOAN: No.

MR ISEPPI: But I think they're quite stupid sort of points to be in - and as to the notion at times of limiting people to certain projects, I think the marketplace is the greatest force for dividing people and people's own passions for where they want to be. Even with architecture, you take two graduates, one might go to a large practice and for three or four years he'll do photocopying, make coffee, and if he's lucky, a couple of door schedules. He'll never meet a client, never talk to a builder, never arm wrestle a contractor. The other one will choose to go to a small practice and from day one, he'll bump into a builder, a client, he'll have to arm wrestle with suppliers and contractors and four years later, one will say he's done houses and local small offices and the other one will say he's done 40-storey buildings. Who is competent?

PROF SLOAN: Good point. Finally?

MR McLAUGHLAN: Yes, I started I guess much the same way. I did an architectural qualification at RMIT in drafting. I worked for the government for six years. I worked for a large building company for six years, I worked for a large building company for six years and I went into a design and construct business for a small period of time. Eventually, because opportunities seemed to be such that they were limited, I started my own practice. I started with levels of competency to do a range of work and as I produced that work, the industry asked me to do other things and I had enough training and background to expand it. I've had a number of occasions - and we reflect on it these days - when there is different discussion on limiting work and limiting what you can do with a level of competence, and I asked these people, "Which day was it that I was competent to do this job?" because we now cater for multi-million dollar projects, commercial restaurants, industrial, large multi-residential, medium rise, low rise through to high quality housing and small housing, extensions, kitchens. "I want to ask which one of those is it that I learnt to be competent?" I employ a team of between 10 and 15 people which includes one architect, interior designers, we have consultant engineers who work with us very closely and all of the other professionals who work with us very closely.

We produce, the industry tells me, a professional product across a range of types of project. The interesting growth in the skills of architecture are that most architectural practices, design practices, building practices, have specialists who do things to provide a team environment to produce a product. In an architectural practice, there may be a person only writing specs, another one only detailing, another one only designing and one administering. Most of us run smaller practices where, if we don't now, we have had to combine all of those functions to produce a result.

One of the other interesting facets that I've noticed is the number of times in maybe our better quality projects - and we provide a service that takes us from conception through sometimes to contract management, not always, but just when the client feels they have a need for some people to be present through the construction period - but the depth of detail that we go to, the questions we ask, the analysis through the job, our clients think of us as architects because they don't know anyone else who does that. I refer to my company name as "building design consultant" and

all of my letterhead, all my paperwork, that's all I ever talk of myself, as a building

design consultant, yet I get interminable numbers of occasions where I'm introduced as "my architect".

PROF SLOAN: Yes, that's the kind of vernacular use of the term. That's what they see you as.

MR McLAUGHLAN: Because they don't understand the meaning of what we do because that's the only terminology they understand to - - -

PROF SLOAN: You could give them a copy of the Victorian Architects Act.

MR McLAUGHLAN: Yes, I could do that, but still they say, "But why are you different?" and then I take them aside and I say, "This is what I am, this is what an architect is and I am a designer." "Oh, okay." They still don't understand it but that's where it is.

PROF SLOAN: Is that common, your roots into building design, do you think that's the typical - - -

MR McLAUGHLAN: That is - - -

PROF SLOAN: I mean, we heard in some other states, some people came in from the building side - - -

MR ISEPPI: You would find probably people of mine and Geoff's age have come through with some involvement in formal architectural education. The next generation, it's like the old engineering certificate courses, then the design drafting courses came into it. They have come through those avenues. But I guess the whole gambit of building designers is that it does take in all those people that are part of the building industry.

PROF SLOAN: I suppose what you say, Brian, I must add that I honestly think the government should not but cannot do much to limit the degree of competition in this industry. This is a very competitive industry and there are low barriers to entry for the players. In a sense, the role of the government is to protect the consumer. But what you were saying, in effect, was that - correct me if I'm wrong - it seems that the building designers have got their act together particularly in the last five, maybe 10 years, so it's better organised, building up a brand name, and this really in a sense has been assisted by the fact that you have to be registered under the Building Act. So what you're saying is that at least keeps out the real shonks who probably will take advantage of an unwary consumer. But really, the barriers to entry are very low and it seemed to me - it's up and down, this is an industry - that it's been very competitive for a very long time.

MR McLAUGHLAN: May I speak to that?

PROF SLOAN: Yes.

MR McLAUGHLAN: I was involved in the association at the first instances of registration and it was very interesting that when the formative committees and people were looking into the building industry, the drafting industry, to say, "Who is there out there?" the Building Designers Association at that time was quite small, but it was small because it was joined by people who wanted a camaraderie and a means of similar intent. It only had about 40 members and there were fairly stringent entry requirements to get in. You couldn't get in just because you were practising, for example. You got in, you had to present a folio, you had to present references, you had to explain your work and demonstrate a level of skill and competence to achieve membership.

PROF SLOAN: Exclusive club.

MR McLAUGHLAN: It was seen to be that way and ultimately when licensing came in, we were told in no uncertain terms that was a little elitist. Subsequently the membership grew. I guess I want to take the story from just back early on and I remember being introduced and the introductions were strange. They happened by fluke sometimes. I'd only recently joined this association at that point of time. The most common statement was, "Well, who are you? Who is out there? What do you do?" Certainly no-one in the government, the legal circles, who were framing the act really had any understanding of what the industry actually was on about. All of us were in practice at that time and had been for many years. There was an industry that just did work. It wasn't visible, it wasn't public, it was just doing a job.

In many cases - and I've noticed an enormous change and I must admit I've been very proud to be part of that change because of the professionalism - and you've mentioned a number of years, and there's no doubt licensing created that environment - it didn't create the professionalism in itself because the majority of people were still there, but there's been a very strong growth and improvement through that time.

PROF SLOAN: You've been able to build up a label really, haven't you, which has probably taken out a bit of confusion in the market, do you think?

MR McLAUGHLAN: The point about labelling is an important one because we actually believe the Building Act has assisted in the creation of that labelling. As Rob rightly says, the professionalism has always been there but the Building Act actually provided the focus. That focus now is not only about protecting the shonks or even endeavouring to raise the bar in terms of entry level, but it's giving a better focus. It's putting people on their toes a little bit to know that they do have this legislative framework to work within and it's their endeavour to ensure that they do so.

DR BYRON: Does your association have grades of membership, A, B, C, or a system of progression up?

MR McLAUGHLAN: Not now, we don't, no.

PROF SLOAN: I think they have that in Queensland because that's back in the Building Act up there, you see.

MR McLAUGHLAN: Our progression is only as in associate, fellow, life member at that level, not as in a work standard assessment.

MR HAMILTON: We are nationally and down through the states ultimately working towards what you might describe a chartered membership which is only acquired through a long and rigorous continuing professional development program. If I may add, that continuing professional development program did not exist before registration. The Building Designers Association took it upon itself to initiate that at industry level. We really didn't want to be told by government that we had to do that but we recognised that we needed to do that ourselves. In Victoria we had amazing success with it and amazing support from our members.

MR ISEPPI: I think it is significant to recognise that here you had a piece of legislation brought in and everybody welcomely walked straight in and put their hands into the control, for no other reason than it was a clear demonstration of the level of professionalism that the industry operates at. I mean, that has come in over a short period of time. There has not been one complaint within the industry about having to be registered and controlled by government.

PROF SLOAN: No, we heard in Queensland I think - wasn't it, Neil - in fact the idea now is not to be restrictive but to then encourage particularly new members to, you know, engage in professional development if there are gaps and the like, so it is really an attempt to try and raise the quality.

MR ISEPPI: It is compulsory upon all our members annually to apply.

MR McLAUGHLAN: We have probably found that the marketplace is in itself far better educated in the means in which it selects its professionals. Geoff mentioned the opportunities and the occasions where he competes. We all compete and the marketplace is usually fairly astute with the people it chooses to do work, particularly of better quality work, and they don't just sort of lump in on any guy and say, "Here, do it." They make sure he has done some work before. That gives them the credibility to be able to offer that. Sure, there is fee competition and that happens right across the board and goes into the architect ranks and down from. Free competition is there a competent person will win the work if he can do it as a reasonable cost. To be quite honest, none of us charge cheap fees. So the issue is not really a cheap fee service. There are some but there are also architecture charge sheet fees to. So I don't see that - - -

PROF SLOAN: Yes, there does seem to be quite a bit of overlap. Neil, have you got other questions?

DR BYRON: You mentioned before auditing by an external body. By that did you mean the Practitioners Registration Board?

MR MORISON: Yes. They are in fact that staff of the Building Control Commission. They have an investigations division. The Building Practitioners Board actually assists in preparing what might come out of an audit and that's why they were interested in the educational component of them as well. Those investigators will then go out, independently carry out that audit, then come back and report on either industry trend lines or if there has been breaches of legislation it may then result in a determination as to whether an inquiry should be held into the unprofessional conduct of that practitioner.

DR BYRON: Are there people who audit only building designers or do they have a broader agreement to cover other groups as well - or is there somebody who goes and audits all the electricians and somebody else does the plumbers or - - -

MR MORISON: No, they do not have specialist auditors as such. Those same investigators would audit building surveyors or house builders or architectural draftsmen, in a sense.

DR BYRON: I mean, one of the things that I am trying to clarify - the Building Services Authority in Queensland said they want to know that people who provide whatever particular services, have been accredited and certified by somebody and somebody who is a credible certifier. Now, he doesn't really care whether it is an industry organisation or the ABC Pty Ltd or somebody else but as long as there is an accredited certifier that is responsible who can take the blame if it turns out that an individual practitioner has been substandard. Is that similar to what happens in Victoria?

MR MORISON: No, in the sense that, I repeat, all that would happen in this instance is that the Building Practitioners Board and the Building Control Commission would indicate that they would be carrying out audits of one of the particular disciplines. So there would be four, half a dozen of those investigators who would go out and audit at random - so it is done on a random basis - and would simply then determine who they would consider for the purposes of auditing, do so and make their investigation report, come back to the board.

PROF SLOAN: Sounds like normal - - -

MR MORISON: And make their observations accordingly.

DR BYRON: Because one of the issues is how independent and seen to be independent are the auditors or the inspectors? Is there any sort of risk capture or sort of an old boys network that - - -

MR HAMILTON: Not with the Building Practitioners Board.

PROF SLOAN: Maybe it is not your old boys - - -

MR MORISON: The answer is no. There is not - and, okay, it is a young board in many respects. The act only came into operation in 93 - but that is certainly not a culture that is implicated into the current thinking of the board. Indeed it is, because it is Building Control Commission staff who have an obligation to provide infrastructure support to the board but are not completely locked to them, the Building Control Commission, if it wished, could carry out those performance audits without necessarily reference back to the Building Practitioners Board. They obviously do reference it back because they know they will get at least some better and practical understanding of the sort of questions or the conduct of the investigation.

DR BYRON: Could I come back to the other point that you raised in your opening about the very cutthroat tendering and the implications of that for quality and innovation. It seems to me that tendering has been around building for an awfully long time and probably likely to persist. Do you have any suggestions on how you safeguard the incentives for innovation and to build quality control into it? I mean, apart from saying the tendering and fee bidding and so on puts pressure on people to cut corners wherever they can, how do you guard against that?

MR ISEPPI: I think there is always a case for every statement but at the end of the day anybody that takes that line is talking about a very short spectrum of time because you're not going to be around and certainly industry is not stupid and it will not tolerate that for a long time. If you intend being around for any length of time I think the competition is good, it's healthy. I think that's what drives innovation. It's not about having it as a closed club and only a handful consider that - if it's not thrown out and everybody is not put to some boundaries, then those opportunities don't arise. In terms of cutting corners, I mean, the whole industry is - if that was the predominant outcome, that is the same circumstances that the whole industry operates, from construction, management, builders, subcontractors: everybody is under that same hammer.

I don't see any reason why the design services or the engineering services or any other part of that should be outside that spectrum. I mean, you can get to circumstances when projects are driven that hard and that can be the result. But, as I say, the players within the industry aren't silly. I mean, you learn to gauge those things.

DR BYRON: It sort of comes back to the level of sophistication of your clients I think. Do you ever have any trouble explaining to a client that, "Look, my services might cost a little bit more than Joe Blow down the road but it will be a better job. The building will be lower maintenance for the rest of its life or it will be more innovative or smarter," or something?

MR ISEPPI: That's just the marketplace. I personally don't because we point and demonstrate to what we deliver. We point and demonstrate to who we work for. 90 per cent of our work is repeat clients. In 25 years we've never advertised. So, I mean, it's what you are that attracts and allows you to hold your client base. It's not

the fact that - you know, everybody is conscious of a dollar and keeping things to a budget but it's also about being able to demonstrate value. To me they are just the forces that - I mean, each of us has some capacity to demonstrate that physically and at the end of the day we will make commercial decisions considerably based on our gut feeling and personal relation and understanding of what the other person across the table is standing - whether they stand by what they're saying or it's just rhetoric. I don't see it as a big issue. It's not in ours, I don't know about anyone else.

MR McLAUGHLAN: The issue of competition in that way is a very constant one and I have to say I face that commonly. I faced it yesterday. I think the issue of providing a quality product is the issue that our members and the association is promoting all of the time. Every meeting we have is promoting improving standards, developing standards, maintaining a level of performance. Those of us who do the broad cross-section of work and do get involved in people, small developers - and we do - the smaller public, they are people who have access to the absolutely full ambit of building designers through to anybody. We face that situation fairly commonly and we show them a level of product and a cost. I make no bones: "If you want cheap you can get cheap but you've got to look at what you're getting at the end of the day."

Everybody has to look at the quality of what they put out. With the likelihood, possibility, of audit, with ongoing development, with the insurance obligations that we now have - and we all have professional indemnity insurance, every single practitioner - it's not worth taking that sort of risk. The role that the association has played over the years is to develop the awareness of that risk and constantly promote good contract negotiation, etcetera etcetera. So I think it is a fear that is there. You will never maybe stop completely the cheap undercutting person and the industry just has to continue working with it, but I don't think there's any industry - and you can take all of the industries that are otherwise regulated - any trade, any profession, you'll find good ones and not so good ones. We're not saying there aren't bad practitioners. We're not saying that at all. We're saying there are a lot of good ones and we're working to continue the standard.

DR BYRON: One of the points that have been put to us in the hearings around a number of states is that, if the recommendation was to repeal the acts, this would automatically trigger a race to the bottom, the lowest common denominator. The opposite argument is that competition is what stimulates people to produce better quality, better value for money, more innovative ideas, trying to prove that you can provide a better proposition than your competitors.

MR HAMILTON: Within our own industry, the Building Designers Association, we have very, very skilled and competent members that work from home in their garage. I can't compete with them, but the quality of their design, their creative component, is very, very good. The way I've set my office up, I need X amount of dollars per hour which may not make me competitive in a tender process, but that doesn't say anything about the differences in quality of service. I mean, it's yards apart, miles apart.

MR MORISON: Commissioners, you've listened to four practitioners. Let me say that I, however, personally would not discount that lowest common denominator argument. I think there is some truth to it. How much you'd put to it I'm not sure, but I think that, regrettably, the tendering process has created some ills. There was an investigation in this industry at one stage over collusive tendering practices and they all amounted to defence mechanisms to try and stop all that lowest common denominator. So I have sympathy for the view. I'm not sure that it should be seen as the sole reason to argue against the repeal of the legislation, but it is a factor that I personally believe would need to be taken into account.

PROF SLOAN: I wouldn't have thought it would have really anything to do with the legislation, though. Thank you very much, gentlemen, and thank you for your time and putting together a submission. I know you've done a variety of contributions, so thank you very much, Brian and thank you, gentlemen.

MR MORISON: Thank you.

PROF SLOAN: Have we got Peter Hirst here? Peter, if you could introduce yourself and give your affiliation for the purpose of transcript.

MR HIRST: Affiliation to what extent?

PROF SLOAN: Well, you know, your company - - -

MR HIRST: My company, my institute membership, all these things?

PROF SLOAN: I think just your company is probably fine.

DR BYRON: Whatever you think is relevant.

PROF SLOAN: Happy family man, that sort of thing - no, keep going.

MR HIRST: My name is Peter Robert Hirst. I am a director of Greenway Hirst Page, architects, and a director of Progress Constructions Pty Ltd. I'm a registered architect in the ACT and I'm a registered architect in Victoria. These are dating back, ACT to 1974 and Victoria in 1975. I have a bachelor of architect with honours from Melbourne University in 1973 and I have a diploma of town and regional planning from Melbourne University in 1973. I commenced practice as a sole practitioner in 1979, established Hirst Page in 1983, Greenway Hirst Page in 1985, as a company in 1986. I am a fellow of the Royal Australian Institute of Architects. I am a member of the Royal Australian Planning Institute. I am a happy family man. I'm not sure - if your determination goes against me I mightn't be but - no, if I may proceed with the submission?

PROF SLOAN: Absolutely fine.

MR HIRST: Thank you very much. If I can say - and it's not a major issue - I did send back an email to a Michelle Cross dated 2 June 2000, to which I have received no reply. It was seeking further information to assist me in my submission, and it was the actual terms of reference of the review - it will be on an email - the terms of reference of the Productivity Commission, the minister to whom the Productivity Commission is responsible, and the legislation that enables the Productivity Commission to change state legislation. I'm not a lawyer but I thought it may have been not a bad starting point. I don't really wish to proceed with that any further apart from the fact that lawyers, one would imagine, will have looked at the fact as to whether or not Big Brother can just come in and change the whole state of affairs.

PROF SLOAN: Why don't you come back to those questions when you - - -

MR HIRST: Complete my submission?

PROF SLOAN: Yes, complete your presentation.

DR BYRON: Unless you want us to answer those first.

MR HIRST: I really don't wish to take up the time of the commission.

PROF SLOAN: We'll come back to them, but I think the more important point is your presentation.

MR HIRST: I agree. My submission is in a variety of points. I think I've listed 16, but, number 1, it is a breach of an individual's constitutional right to deny that individual the right to distinguish themselves as an architect based upon their training and experience to achieve that name, "an architect". If a person works toward a particular qualification or status which is established under the Universities Act, under other varying forms of legislation, and carries a legislative title with that via the qualification - not the registration I'm talking about - they should have that right upheld.

My second point is similarly constitutional, or rights of an individual - that to not distinguish an architect from a draftsman, enabling the draftsman to call themselves an architect, will confuse the common person and deny them, the consumer, their right of freedom of choice and as such deny them their constitutional right of choice. If I said, "I'm going to hit you with a feather duster," and then I pick up a table and hit you over the head, I would suggest that there would be a different impact, and it is effectively doing the same thing with this intent of the legislation. I walk up to a person in the street and I say, "I'm an architect" - there is an inference. If I walk up and say, "I'm a horse" - there is an inference. We are changing our language. This is specific to the submission.

So they're two key points in my view: (1) the right of the individual to take action over an extensive period of time to achieve something which under legislation is recognised, is then taken away from them. So that's the individual themselves. The second one is the right for the community to have a language that they understand which is taken away from them, their right.

In terms of the commission report, the architectural profession is not highly regulated at the moment. The essence of the current Architects Act is to restrict the use of the word "architect" and its derivatives to those that meet the qualifications set out in the act. There is currently already no activity that can be carried out by an architect that cannot be carried out by a non-architect. The current legislation protects the public by providing them with a clear choice. They can choose to either use an architect or not. If the act is repealed, when the public requires a building to be designed they will have to choose between the following: a building designer with an architect's degree and other qualifications as would enable them to be registered as an architect under the current system; a building designer with an architect's degree but without other qualifications that would enable them to be registered as an architect under the current system; a building designer with a different qualification, allied to the design field; a building designer that has some formal training in the design field but has not actually gained any qualifications; and a building designer

with

no formal training.

If all five building designers are allowed to promote themselves as architects, then the result for the public will only be confusion. They will then be in the awkward position of having to make careful checks on the level of training of their building designer before engaging them, and I would like to just emphasise that point at the moment. I strike this every day in our industry with whether it be builders, when people are assessing a builder; when they are assessing us as architects; when they're assessing - there is not the ability, there is not the time, there is their anxiety of showing lack of trust in individuals they come into contact with. They do not take the responsibility by the throat and say, "I will check this process through." Some may, but I would argue that it's a minority and, if the legislation moves the way it is, you are putting an absolute onus onto a community of which 5 to 10 per cent will be in a position where they will take the responsibility to pick up that phone and find out what it is.

The registered building practitioners - the situation that exists there at the moment is absolute confusion. There have been television shows regarding it. Any suggestion of this does not seem to understand the common level of knowledge of individuals. My wife is a secondary teacher and says it to me day after day after day - about the lack of what we, with some good fortune, ended up at university, ended up with qualifications. We do not realise the common level of understanding of people, and this Productivity Commission, moving ahead with some decision to suggest that you've turned people into people able to confront organisations, to question another individual, which isn't a common thing - I don't walk up and it's not even for me to just question a situation. It doesn't exist, and that's what you're demanding of them. So the point is it is going to be absolute demand upon them.

Under the current act the public knows that if a person is an architect they will fall under category 1 above; if they are not an architect they will fall into the categories of 2 to 5. A lot of people currently prefer to use an architect because they know what category of professional they are engaging. They don't have to ask those questions. The person says, "I am an architect."

One of my early jobs in 1979, when I went out into practice, say six years or so after I graduated, was to work on the Benalla Ski Club, where a person had purported to be an architect. This was the basis of the case: I was brought in after an arbitration. The building leaked. Now, in a ski resort that's a little bit of a problem. The person was not an architect, and it's not the issue that an architect may or may not have made that mistake, but the people were of the view and absolutely given confidence that that person was an architect. They expected a level of performance. The essence of the arbitration decision was that a person who had purported to be an architect had in fact given a level of confidence to the client which - there would be an expectation of a higher level of production.

So a lot of people come to - because they know what category of professional they are engaging. Though they may know there are many good operators in

categories 2 to 5, they will not know what category between 2 and 5 they fall into. They may not want to take that option. By repealing the legislation it will just mean that people will not know whether people are in category 1 or 5 unless they make specific inquiries, which they currently do not have to do for category 1. It is a cost - it's not just the cost. It's an absolute query as to whether it will occur and there will be more confusion, more community cost, more AATs, more VCATs, more whatever you want to do that just cost the people money, time and anxiety.

The submission is not about claiming that the public need to be using architects to ensure they obtain the best or even a good level of service. It is about saying they have the right to choose between using an architect or not. Take other professions. In the legal profession, many people consider that when buying or selling a property they do not need to use a solicitor to have their conveyancing done and will choose a cheaper alternative. But, when they do, the person doing the work cannot call themselves a solicitor and the customer knows they have elected not to use a solicitor, and that's what exists in our industry at the present time. It's not standards; it's perception, and it's a critical issue in the rights of the individual, which I raised earlier.

In the accounting profession, which does not have the same protection, the public are faced with the confusion of trying to ascertain the differences between an accountant, a chartered accountant and a CPA. With all my marvellous qualifications and experience, I couldn't - I know a certified practising accountant probably off the TV ad, but I don't know how that distinguishes it from a chartered accountant or an accountant, perhaps because one of my partners deals with all of our finance. We've got three partners in our firm: good, let him worry about it. But the issue is I know that if I had to make that selection and come up - I would get on the phone, but because I don't mind having a fight from time to time, I will get on the phone and I'll ask the questions and I'll embarrass, "Well, why aren't you?" But it still requires an exercise, and I hark back to Gillian Jean Hirst, who was Hocking, who says, "Peter, will you get into your head that people are not of the same training."

I don't profess to be an intellectual giant, but we are - she has taught at secondary schools and it is really a classic case of professor and a doctorate. You're not average people. You're sitting in judgment of whether or not the basic consumer out there is going to be feeling the same that you're feeling. With all due respect, they are not.

PROF SLOAN: They're bad examples, as a matter of fact, because they are not legally reserved titles. You haven't chosen good examples. None of those are legally reserved titles.

MR HIRST: No. I'm actually on the committee of convocation at Melbourne University and I'm on the board of the faculty of architecture and we have an issue going through at the present time, and I thought exactly the same thing that you were coming through. I might change my name to being Prof Peter Hirst, or I could change it and my first name could be Professor. But it's an issue that we have at the

moment with the faculty board. RMIT (indistinct) if you want me to, but "professor"

is given in a different manner to the way "professor" is given at Melbourne University, which is different to the American situation. So I agree, but you are not creating something which is going to fall down on somebody possibly or give them something - - -

PROF SLOAN: I potentially do more damage than that; destroy the economy.

MR HIRST: We've already had experts doing that who we don't have to call professors or anything.

PROF SLOAN: Okay, let's finish, Peter.

MR HIRST: No, I'd like to keep moving. So if there were restrictions on the use of the word "accountant" this confusion would not exist. People could still choose to use a tax agent, but they would know they weren't an accountant. What possible advantage is there in repealing this legislation? Not one non-architect would be able to provide one more service than they currently provide to the public after the repealing. The only difference - sorry, yes, there is a difference. You couldn't be calling yourself a professor if you weren't qualified to have that professorship, or people would be able to query that and seek whether or not you were.

PROF SLOAN: Of course, but it's not illegal for someone to call themselves "professor".

MR HIRST: I think it would be if you were putting yourself up for a job at Melbourne University or any institution and you put on your CV, "I am Prof Such and Such." That would be illegal.

PROF SLOAN: Yes, but - - -

MR HIRST: It would similarly be, whether it be a doctorate or a medical doctor - - -

PROF SLOAN: But if you want to go around and call yourself Prof Peter Hirst that's not an illegal thing and there's no-one going to come after you.

MR HIRST: No, but that's not the - if I went around and called myself Prof Peter Hirst in this room here and I'm not providing a service upon which that professorship may have some influence, it may not affect anything, but you walk to a position where you put forth a paper, that is Prof Such and Such presenting that paper or you are accepted to run or speak at a conference where your designation is as professor or a doctorate, and that was part of the decision - that inferred, there was an inference in that. I think it is a good case. It's a classic case of inferring to the people that you are a person of a particular status, and I think it's actually a really great example.

It really tells people this person is there, and if that was found out - we've got a conference in Sydney coming up, starting next Monday, and there has been a

drop-out

rate of - there hasn't been a great deal of attendance at that conference and part of it is associated with the designation of people who are going. That's a cost issue to the community and it's going to be a cost issue to the other people and I think it's a classic case and it's quite a clear distinction. It's not until - the impact of it doesn't apply until you're in the position where a decision is made based on your classification.

PROF SLOAN: I think it still is a really bad example because there's no legal reservation of title and as you know, school teachers through Europe call themselves professors.

MR HIRST: Different culture. I think it's a very good example.

PROF SLOAN: It's very confusing.

MR HIRST: No, it's not, it's a cultural impact and it has an impact. We act under legislation, building designers, architects, we all act under the one legislation, the Building Control Act, and we are responsible for buildings and insure people - the service we perform. The issue that we're saying is that we all provide a service within our industry. I actually had a separate company called Draftsmanship for a period of time because people would come and say, "Look, we really don't want to be paying the higher fee of the architect in that case. We can use" - you know, I've got a colleague initially who - he charges at a lower rate; he doesn't carry the same responsibilities, he's not controlled under the act and this is the way to move. It's the inference. The more I think about it the better the example gets. The issue - - -

PROF SLOAN: I think it's extremely poor. I don't honestly care if someone calls themselves professor.

MR HIRST: You mightn't but that's only to support your position.

PROF SLOAN: There's no professors' board out there trying to stomp on people who call themselves professor when they're not. No, there's not.

MR HIRST: Well, I think we won't go on because that's actually - you are wrong.

PROF SLOAN: Doctor is also a bad example because of course doctor, for medical practitioners, is merely a courtesy title. There's no legal reservation of that term at all.

MR HIRST: You're talking about pure legal reservation. We're talking about - - -

PROF SLOAN: That's what you're talking about.

MR HIRST: No, we're talking about impact on peoples' rights. I'll move on a couple of pages. I've got a couple of other comments to make. The Productivity

Commission is about - and that's why I asked what the terms of reference were.
Weren't you just talking about - - -

PROF SLOAN: Now you've got the terms of reference. It's in the report.

MR HIRST: No, I don't want it at the moment. I'm talking about this, and that is that I'm saying that the issue behind all of this is - the Productivity Commission is talking about the community gets no benefit out of the distinction between the terminology. You're moving away from what I'm suggesting about professor and doctor; it doesn't make any difference what we call ourselves when we are not performing a service. So that's absolutely irrelevant. The relevancy comes in when you're providing a service, when I'm providing a service, and if you put forth yourself as professor I would expect as a general member of the public that your level would be at a higher level than a senior lecturer or a lecturer or a tutor. Now, culturally if I was to get that service from you to perform something I would then be expecting you to achieve a higher level. That's previous arbitration.

PROF SLOAN: I'm not saying you wouldn't expect it but there's nothing legal about it, whereas that's different.

MR HIRST: Fine. That's not the term - the terms of reference to my understanding - - -

PROF SLOAN: That's the focus of this. It's the Architects Act, right?

MR HIRST: Yes.

PROF SLOAN: And there is legal reservation of title.

MR HIRST: Okay. If you make a determination based on that sort of a summation I think - and that's what I was asking, for the terms of reference I think it would be able to be legally challenged because your terms of reference you are changing from a terms of reference which is looking at the impact on the public and that is what I understand is the terms of reference and you're now turning it back and saying, "But legally this means one thing and this means another." We are talking about - and even just the latter part of the hearing - chaps were talking about levels of service to the community and that's the driving force behind this, not so much what it means legally in the first place or not.

PROF SLOAN: Do you want to just ask us those questions again and we'll - - -

MR HIRST: No, I don't. I want to go on to page 147 and 148 of your report.

PROF SLOAN: Okay.

MR HIRST: So, not one architect will be able to provide one more service than they currently provide to the public. The only difference will be that they could provide exactly the same service as they do now except that they will be able to confuse the public by telling them they are an architect and which we feel is inappropriate. If I could refer you to page 147 and then 148 of the report. The

comments made in the report, "The commission's preferred approach." Line 1, 2, 3, 4, 5 of the first paragraph, underneath that:

Certification provides negligible additional consumer protection and community benefits.

Well, I'm astounded, absolutely astounded, when we just talked about the table, the feather duster, the horse, whatever it may be. A person is in a position where consumer protection is absolutely inherent in language. If I came out now you could - you know, all the other examples. If I spoke to you now in Chinese and I read you the riot act about, if you sat there for any longer you will be sued, but I say it in Chinese, and I still expect you to have the same understanding it's wrong. So, the same thing: if I walk around and I say, "I am an architect" and a person expects a performance level as associated with that, it's wrong. So a self regulating profession - it moves on:

And little information over and above that which is or could be provided by a self regulating profession.

As much as I've been a member of the institute since 1970 as a student, then as a member and then after 10 or 11 years became a fellow, the self-regulating profession is not accountable by law and the essence of protection of the public is accountability under legislation. If it's not under legislation it's of no impact.

PROF SLOAN: So the engineers aren't a well regulated occupation in Australia?

MR HIRST: Via the member of ACEA, are you suggesting?

PROF SLOAN: Through the Institution of Engineers.

MR HIRST: I don't know enough about that to answer but I would suggest - - -

PROF SLOAN: So you don't think that Australian engineers are any good? And you don't think the public - - -

MR HIRST: Maybe I do question it at the moment. The basis of - - -

PROF SLOAN: Do the public understand what an engineer is?

MR HIRST: Well, I have a joke about engineers. I called my dog Engineer because every time I gave him a kick in the arse he made a bolt for the door, but the basis that I'm saying is that there are different words for "engineer". "Engineer" has a number of connotations but when you - the engineer is normally only involved in a project once they get to the level, often, it's as a secondary consultant to the principal consultant which is the architect, because they are brought in for specialist requirements. They are not - - -

PROF SLOAN: But you haven't answered my question.

MR HIRST: Well, ask it again and I'll try and - - -

PROF SLOAN: Do you think the public understand what the term "engineer" means?

MR HIRST: No.

PROF SLOAN: And you think they understand what the term architect means, notwithstanding - - -

MR HIRST: Absolutely. Absolutely.

PROF SLOAN: - - - a lot of other evidence we have.

MR HIRST: Can you name every engineer, every person who can walk in and say he's an engineer?

PROF SLOAN: Yes.

MR HIRST: Which ones then?

PROF SLOAN: Because they will be a member of the Institution of Engineers.

MR HIRST: Are you sure?

PROF SLOAN: Yes.

MR HIRST: So the acoustics, the hydraulics, the mechanicals, the civils - we want to move on.

PROF SLOAN: They have - yes, because you have an umbrella organisation. I think that the point is - - -

MR HIRST: I think you're wrong. I'll check it too. No, it's not: a self regulating profession is not accountable by law. When we never had people - once upon a time the only way that you would get - because architects in tradition were articulated and there is actually still a provision where a person can become an architect by never having gone through an architecture course and then becoming registered. I discovered that because I was chair of the undergraduate education committee of the institute - - -

DR BYRON: We had one here yesterday who came through the same route; never had a degree.

MR HIRST: Yes, you can actually move through. That was a tradition back earlier in the - - -

PROF SLOAN: But why is that relevant to this discussion?

MR HIRST: The relevance I'm saying is that there was a period of time within which that may have been possible but it still ended up the only way they could call themselves an architect was if they ended up being registered. But they could classify themselves as an FRAIA or AIA. We still have architects in Australia who defer to the British - they are ARIBA, Associate of the Royal Institute of British Architects, and it still has some degree of status, but I am suggesting to you that legislation is required as distinct from a self regulating profession, apart from the fact that it is not accountable by law, it is subject to voluntary support and self-interest promotion.

With all due respect to your institute, the selection of presidents of the Royal Australian Institute of Architects, Victorian chapter, over the last period of time has been often selected on a basis of popularity. It hasn't been the - - -

PROF SLOAN: What, you mean democracy?

MR HIRST: No, popular support by elite, not by the masses. Not by the masses. It's actually a designated position.

PROF SLOAN: Of course often the president of the RAIA is also the chairperson of the Architects Board which is very handy, isn't it?

MR HIRST: That's not the case.

PROF SLOAN: That has been so in many of the states.

MR HIRST: Well, it's definitely not in Victoria. I would check that, because it certainly isn't in Victoria. They have not been - I don't believe even board members have necessarily been on the Architect Registration Board in Victoria for as many years as I can remember. So to suggest that is the case is wrong. It's subject to voluntary support and self-interest promotion. It does not have the independence that is required to be fair and honourable under the law.

If you suggested that the association - if you tried to suggest to the Building Control Commission that they allow whatever the varying associations of drafting - you know, designers, these things, to actually be the basis upon which they can become registered building practitioners, they would laugh you out of the court. They don't allow an architect to - the only way that the architect doesn't have to go and become a registered building practitioner is as a consequence of the Architects Registration Act, not because of their membership of the institute.

The membership of the institute, it's a double-based issue. I just suggest, and if you were close enough to some of these organisations, probably your own

professional institutes, you would see the way that those organisations operate and they have a totally different manifest frame of reference than what a registration board or others may have. The next point:

Thus for the principal reason the certification of architects is not well suited to its ostensible public interest roles.

Well, I think it goes back to this terminology issue again. Then:

The commission considers that this change would not create hardships for architects or consumers.

In one of the final paragraphs a statement:

The commission considers that this change would not create hardships for architects or consumers.

I don't think that's the terms of reference about what the commission was, about hardship. We're talking about service to the community. So when you then move on to a discussion about whether it's hardship to the architects, the architects haven't asked you to look at changes in the legislation to impact one way or the other on their hardship. The whole Productivity Commission which is admirable is looking at service to our community and ensuring standards.

So if we're talking about protection of standards the issue of common knowledge, common understanding is the essence of what protects standards. People use a language. We've had a language for years and that language is meant to inform and when that language misinforms it is wrong and it's improper and it's not right. So it moves on, the second last line on page 147:

Indeed, the commission is of the view that current arrangements may have fostered an inward-looking attitude amongst architects.

I'm bloody glad they know those sort of things over us. I'm damned if I know how we do, when we look outside and make reference to the fact that we work cooperatively - I'm working with a project builder at the moment. We'll do some concept sketches. We work with the building designers and the draftsmen to develop these projects. We work in a cooperative arrangement -

encourage them to rely on legislated monopoly over use of a title to protect them from competition.

It doesn't protect - - -

PROF SLOAN: That's what your submission has been telling us really.

MR HIRST: No, it has not been telling you that. It's been telling you - it's nothing

to do with competition.

PROF SLOAN: You've virtually confirmed that sentence for us.

MR HIRST: No. I will confirm again, it is to protect the public. It's to protect the public in terms of their understanding. The public are generally, by that terminology, aware of what they want. In a lot of cases they don't want or don't need an architect and I think the profession is quite clear that that's the way they want to handle it because when we try and compete with the drafting services who don't necessarily have the same overheads, who don't necessarily have to cover - not always - the same responsibilities, it just ends up as a war and that's not appropriate.

PROF SLOAN: We're running out of time, Peter.

MR HIRST: Yes, well, I still want to finish, though. I didn't know I was given a set time.

PROF SLOAN: You would have, yes.

MR HIRST: So there's a set time?

PROF SLOAN: Yes.

MR HIRST: What's that then?

PROF SLOAN: Everyone has a set time - till 11 o'clock.

MR HIRST: To 11 o'clock, so if I don't finish I'll be cut off. That's fine. It's just good to know it, that's all.

PROF SLOAN: Yes, well - - -

MR HIRST: Okay. No, that's good, that I'll be cut off if I'm not finishing, because I'm - - -

PROF SLOAN: Certainly finish your - - -

MR HIRST: No, no.

PROF SLOAN: We're nearly onto the final page of the report, aren't we?

MR HIRST: Yes, we nearly are. So protection from wrongdoers for all to give certainty. It is fair - the same thing, encouraging them to rely on the legislative (indistinct) with the use of the title to protect them from competition. I just would suggest to you that that's not the intent of this study. It's to look at the protection of the consumer's rights, the protection of standards.

The final page, in the second paragraph there's a reference to what the British industry has done. Can I ask who has given credibility to the similarities between the British industry and the Australian industry? From my experience it's a totally different culture, it's a totally different level of service. To use this sort of reference through some approach to suggest that that gives that statement credibility is absolute nonsense, or bordering on nonsense. There are some linkages, but nonsensical.

The final paragraph, "Architects have unique skills across the community and it is in the community's interest that they market and use their skills as well as possible." Thank you very much, commission, to tell us that it's in the community's interest that they market and use their skills as well as possible. I really don't think again that those are the terms of reference of this commission's inquiry, about what we do or don't do as architects. It's about the service to the community, and it's not a public responsibility for architects to promote themselves. I think to have anything like that being the incorporation - and if that's the basis upon which judgments are being made, it's not founded under the terms of the reference of the inquiry. "In the commission's view repeal of the act would provide them with appropriate incentive to do this." So I really have a grave difficulty in understanding whether or not the terms of reference have fully been addressed by the commission in those terms, and I think that, unless there is a quantifiable means upon which they have tried to assess that basic public, of which they've used average people to undertake the studies, I would question the outcomes. Thank you very much.

PROF SLOAN: Thanks very much, Peter. Thanks for your contribution, thanks for your thought in putting your submission. We'll now break for morning tea.

DR BYRON: I just wanted to clarify: the terms of reference are in the first couple of pages in double spread there. Also there's a bit there explaining the history and origins of the commission, and after the terms of reference, which are signed by the assistant treasurer, and the list of legislation to be reviewed, there are also some comments in there about the process of how our recommendations - I think you should understand that the commission is an advisory body that reports to the federal treasurer and through him to the federal government, and they will pass on our report to the relevant state authorities, who will then consider it and make their decisions. So we are not making a judicial decision in the commission. I just think it's important to clarify that.

MR HIRST: And the minister responsible is the treasurer?

PROF SLOAN: Yes.

DR BYRON: The treasurer is the minister to whom the commission reports, but the commission is independent of the treasurer.

MR HIRST: Yes, but they report to the treasurer and it's the treasurer's responsibility to take or make or adjust that recommendation to parliament?

DR BYRON: The treasurer was asked by all the state governments except the Victorian government - the former Victorian government - to request the commission to undertake the inquiry, and they set the time frame for the inquiry, the starting date and the finishing date. So those are outside of our control. They were given to us by the federal treasurer at the request of the state governments, and it's the state governments who will ultimately make the decision on this matter, although our recommendations go to the federal government. Is that clear?

MR HIRST: Thank you.

PROF SLOAN: And we are appointed by the governor-general.

DR BYRON: Not by the government, by the governor-general on advice of both houses of parliament.

MR HIRST: I don't have any question about your appointment. No, that's fine. Thank you.

PROF SLOAN: Thank you very much.

PROF SLOAN: We now recommence the public hearings of the review of legislation regulating the architectural profession on 22 June 2000 in Melbourne. We welcome particularly the representatives of the Royal Australian Institute of Architects - I could sort of say at last, in a sense. As you know, we've been everywhere, man, and we're very much looking forward to your contribution. We allocated quite a large amount of time. I don't know whether you want to take all that time but shall we see how we go?

MR PECK: Thanks, commissioner. What I would like to do is - I'm Michael Peck, by the way.

PROF SLOAN: Can you all introduce yourselves?

MR PECK: Prof Ian McDougall, who is the chapter president in Victoria and Ed Haysom, who is our national president.

PROF SLOAN: Welcome.

MR PECK: What we would like to do, commissioner, is to give you a brief overview of what we feel about this Productivity Commission process. We have submitted to you in writing our response to your draft report. What I would like to go through is this brief overview which is only about two pages long which, if I might go through without interruption and save questions till the end, and then we would be available for as long as you wish to respond to any issues that you want to raise.

PROF SLOAN: Okay, Michael.

MR PECK: Thank you. As I said, the commission has received our written response so rather than read it to you I thought we might just use the opportunity to reflect and comment on the context and purpose of the inquiry. Our understanding is that the intention of the national competition legislative review process is to produce, through a competitive environment - a better outcome for Australia than is achieved under the current legislative arrangements. We readily acknowledge that this objective can be achieved by a review of legislation and improvements to the current regulatory regime. However, the RAIA does not believe that the deregulated market envisaged by the draft report will produce that better outcome for Australia.

We hope that further consideration of the services provided by architects, the market for those services and the responses that you receive to the draft report will persuade the commission to amend its draft recommendation. The draft report does not seriously discuss the conditions necessary in an ignorant market to produce a social optimum, nor does the report attempt to quantify the costs or benefits of the regulatory regimes for architects which it is examining. In particular, the commission cannot point to any monopoly rents being enjoyed by registered architects. In other words, the report fails to demonstrate that the existing legislation is anticompetitive. It also fails to acknowledge that the reasons for existing market failure would be exacerbated in the proposed deregulated market environment.

There is a widely held belief evident also in the draft report that the untrained and unqualified can provide architectural services to a standard that serves the public interest and that competition between these providers and architects will produce public benefit by reducing fees and charges through competition. All markets and all contracts depend on knowledge. An uninformed market makes unwise choices. Witness the growth of tobacco consumption through the 1950s. Caveat emptor works only when the buyer's eyes cannot only see but his or her brain can comprehend the significance of what he or she sees. The report argues that in such a market the consumer will, in a short space of time, become sufficiently informed so that market failure will be avoided.

To ensure we have a well informed community of potential architectural consumers is an enormous task in which the costs would outweigh the benefits of a statutory system for the following reasons: most consumers are in the market once or twice in a lifetime and this is the only time that they wish to receive information. The commission has abstracted from the key problem that in a sequential markets there is no incentive for one duped client to inform the world. On the contrary, clients risk defamation proceedings if they attempt to do so. Secondly, it is impossible to identify potential consumers in advance. Therefore an information campaign would need to be constantly directed at the whole largely disinterested community, a very costly activity.

In any case, unless defamation laws are repealed, it will be a legally hazardous exercise. It should also be noted that even consumers with some level of experience are not well enough informed to facilitate the operation of an effective market, no more than the average motorist can check whether toluene has been added to the petrol he or she buys. The CSIRO report referred to in our written response, I don't know whether you've had an opportunity to see that yet, illustrates that unwise purchasing of architect services is in fact producing significant hidden costs for consumers even with the present level of legislation. The draft report notes that spillovers are intangible and subjective, hence placing value on them is difficult. It is widely accepted that education produces a more capable society. It follows logically that environments produced by people educated and qualified in the field of architecture will be better than environments created by the unqualified.

These benefits will be social, aesthetic, cultural and economic. Many examples can be given but to illustrate a substantial economic benefit I ask you to consider the architect's special knowledge of solar design and embodied energy in construction materials applied to a new housing estate. Savings in energy consumption achieved by the application of this knowledge and skill reduces the demand on power generation, lowers energy production and infrastructure costs and reduces greenhouse gas emissions. These are all positive spillovers from the effective use of architects. Many other examples of course could be given. Governments seek this type of outcome by other means such as voluntary codes, building regulations, sometimes inducements, but the most direct route is the appropriate design by those trained and qualified.

PROF SLOAN: I think you just have to be a bit careful, we are not talking about unqualified. I don't think you should use that term.

MR PECK: Thank you.

PROF SLOAN: Okay.

MR PECK: The corollary is of course the negative spillover that results from bad design and the commission acknowledges this in the report. It is therefore difficult to accept the proposition that a free but uninformed market for architectural services will produce public benefit. Whilst we acknowledge the shortcomings of the current arrangements, the response to the terms of reference of the National Competition Policy agreement legislative review should not be to abandon a publicly accepted system but to improve upon it and modify it. A private or professional association system of registration and regulation such as has been alluded to in the report, would be unacceptable in the global market for architectural services. It would not enjoy enduring public confidence because it would appear to be a closed shop serving the profession instead of the public.

The RAI A has indicated in our response that we have considerable difficulty with the findings and recommendations of the draft report. This inquiry is a public inquiry by a public body charged with a duty of making recommendations to government in respect to legislation. As a body with the quasi-judicial power the commission is bound by the normal rules of administrative law. These of course include the rules of natural justice, such as the hearing rule, the bias rule and the no evidence rule. Those with interests which may be affected by this inquiry have both a legitimate expectation and the legal right to expect that the rules of natural justice be followed scrupulously in the development of this report to government. So in conclusion, commissioner, we believe that the greatest public benefit that could come from this inquiry would lead ultimately to the three following points: firstly, a nationally uniform system of registration and regulation of architects which conforms to world's best practice.

Secondly, an environment in which potential market failure is addressed by guiding consumers towards the best qualified suppliers of architectural services. Thirdly, a competitive environment in which consumers seek to appoint architects on the basis of their knowledge, skill and capability. The RAI A is currently working on a co-regulatory model which we will be presenting to the jurisdictions as a positive way forward to achieve these objectives. Commissioner, I would like to table five documents. These documents are a revised written submission incorporating some of the points that I have covered in this paper today.

PROF SLOAN: So is that the revised response to - - -

MR PECK: Yes, the one that you have is dated June 2000. This is dated revised 17/6/00.

PROF SLOAN: Okay, fine.

MR PECK: The second document that I would like to table is a letter addressed to the Productivity Commission from the chairman of the Architects Education and Registration Board of New Zealand.

PROF SLOAN: I am not sure you can be tabling something that was addressed to us. I think we will have that.

MR PECK: I don't know whether you have received it because it was sent to our office.

PROF SLOAN: We had that person yesterday. When in doubt give it. As long as it is - is it recently dated?

MR PECK: 19 May.

PROF SLOAN: He has had to completely retract that letter - and you will read that on transcript. You can, by all means, table it.

MR PECK: I am sorry, those are the appendices to my tabled document.

PROF SLOAN: Are the current appendices or - yes.

MR PECK: They were the appendices to the revised document, chairwoman. I apologise for that. You do have it, you are correct. I just unclipped too many papers at once.

PROF SLOAN: We know about too many papers.

MR PECK: The second one is a correspondence which I am not sure that Commissioner Byron has received, which we sent - and I just wanted to make sure that he had got it - it was advice of an agreement signed on 22 May by the Minister of Trade, the honourable Mark Vale with the Chinese Minister for Trade and Economic Cooperation relating to trade in architectural services and the definition of architectural services provided by the Department of Foreign Affairs and Trade.

PROF SLOAN: We have got some information from them as well.

MR PECK: The other document that we are tabling is a correspondence from a Mr Jim Sheila, who is the practice commissioner from the International Union of Architects Practice Commission addressed to Mr Ed Haysom but relating to the working of this commission.

PROF SLOAN: Did you request that letter?

MR PECK: Yes, we did, yes. The next document that we're tabling is an advice from the Collegio de Architects de Catalonia advising of the establishment of an international website which records the systems of registering architects throughout the world and we only received advice of that yesterday, and the final document is a letter from Denton Corker Marshall advising the commission of their experience in having to submit their registration information in seeking and getting work in overseas economies.

PROF SLOAN: Thank you very much. Do either of the other two want to say anything at this point? Do you want to head off?

DR BYRON: As you have stated in your introduction and in the submissions, the institute is strongly in favour of a national system. Could you elaborate for us how you would see that national system operating, because the model that we had in mind was a national self-regulatory system, rather like the National Register of Professional Engineers, and I can see how that would happen, but a national statutory system, I'd like your views on what that would look like.

MR PECK: There are a number of models which I mentioned in our paper that we're working on at the moment. Just projecting - for an example - a result from this inquiry to the effect that the existing legislation should be repealed, there would be a necessity and a desire for some other system to take its place and as you have rightly pointed out, one of the options would be for the RAIA to rely, as the only signaller of qualification and quality, being membership of the RAIA - but that has in our view the fault that it would look like a closed shop, looking after our members rather than looking after the interests of the public.

DR BYRON: I don't think we've actually suggested that.

MR PECK: Sorry?

DR BYRON: I don't think we suggested or meant to imply that.

MR PECK: No, you didn't, but I'm talking about the public's reaction to that.

PROF SLOAN: So you see the institution as a nasty closed shop, just protecting the profession, do you?

MR PECK: I don't believe I said that, commissioner.

PROF SLOAN: But that's the model that you object to.

MR PECK: It's not actually, no. If you have a close look at the system that the engineers have set up, they are attempting to address this problem by the board that runs that register having representation of the public on it. So they were addressing that question and as you know - - -

PROF SLOAN: Absolutely, through self-regulation.

MR PECK: Yes, and as you're aware, the ACCC have been concerned about that model. I don't want to get distracted into a discussion on that. I'd prefer to address Commissioner Byron's question which is the models that could be available to us. One of the models that we're considering is that in the event of a recommendation for repeal of the legislation, some of the jurisdictions may repeal, some may not, so there would be jurisdictions interested in maintaining a registration system and I think there is a consensus out there that it would be in the interests of Australia if we had a national system.

So a system could be offered where the RAIA, in collaboration with the jurisdictions that want to maintain a registration system, set up a separate corporate entity on which there is representation of profession and representation of the public through the jurisdictions. This could run a national register. That would be a model that is seen to be beyond the influence of just the sectional interests of the profession and in place to protect the interests of the public. That's one model.

PROF SLOAN: How would that work legally though?

MR PECK: For example, the Australian Building Codes Board is a body set up by the jurisdictions to establish the building code.

PROF SLOAN: They have got embedded state legislation still; that's what you're saying.

MR PECK: Yes.

MR HAYSOM: And the building surveyors too.

PROF SLOAN: They're not ceding any powers.

MR PECK: No. We've mentioned in our original submission to you the concept of the ceding of state powers, but we're realists.

PROF SLOAN: Good to hear. It seems to us that there are some huge practical difficulties in getting a national statutory system.

MR PECK: We don't think so.

MR HAYSOM: There's already a model with the building surveyors where there is a national registration. The states then licence the building surveyors in each state.

PROF SLOAN: Yes, although there's no legal reservation of title for building surveyors.

MR HAYSOM: That's correct.

PROF SLOAN: Is that a die-in-the-ditch issue for you, legal reservation of title?

MR HAYSOM: I don't understand what you mean, die in the ditch.

PROF SLOAN: A very significant issue.

MR HAYSOM: Yes.

PROF SLOAN: What about reservation of the derivatives?

MR PECK: There is a practical aspect to that. The practical aspect is that we're in a system where title is reserved. The public interest argument for the reservation of that title is that it identifies a group of qualified people and the market can go and use that group. In order that the market is not confused by the signals being given, that is why the derivatives are also, in some existing legislation, protected as well. For example, if you see in the shopping strip "architect" and it's reserved and the public know what it means, and then next door you have "architectural draftsman" or "architectural technologist" or "architectural designer", it immediately creates confusion in the minds of the consumer.

PROF SLOAN: Not all architects agree with this at all, and of course derivatives are not legally reserved in New Zealand - it does not seem to create confusion - or in the UK.

MR PECK: So be it.

PROF SLOAN: So you're saying someone who actually has the qualification in architectural drafting, for example, shouldn't use the term "architectural"? Surely not, Michael.

MR PECK: The person who has a qualification in architectural drafting has got probably a certificate or a diploma from a course and there's - - -

PROF SLOAN: Which is called architectural drafting.

MR PECK: That's right, and I was about to say, with that qualification, they should be able to use that title.

PROF SLOAN: Right.

MR PECK: But the reason - - -

PROF SLOAN: So what is the problem with the person on the shop? If that person has the qualification, what's the problem with that?

MR PECK: It creates confusion in the minds of the consumer. The fact that there are courses entitled Architectural Draftsman or Architectural whatever does not detract from the logic of the argument.

PROF SLOAN: It sounds very confusing to me.

MR PECK: Yes, unfortunately the TAFE systems in some cases have adopted that descriptor. It is confusing. You see, those courses are about training people to be technicians, to draw, not to design.

PROF SLOAN: I think you need to be a bit careful. I think I made the point before that honestly I don't think this inquiry is progressed at all by bagging the opposition or bagging the competitors.

MR PECK: No-one is wanting to bag anyone.

PROF SLOAN: I think there is clearly overlap between what architects do and others do.

MR PECK: Yes, commissioner, that's right, there is overlap by what people do, but what we're talking about - we're talking about legislation - is the protection of the public interest, and the public interest is served by the consumer knowing.

PROF SLOAN: You say that, but I don't think we're convinced that - - -

MR HAYSOM: We were making a statement of fact about the courses. The TAFE courses do not teach design, they teach design appreciation.

PROF SLOAN: It seems absolutely extraordinary and it also seems extraordinary to me that someone can have a bachelor of architecture, to actually work as an architect, and yet for it to be illegal for that person to call themselves an architect. That strikes me as extremely confusing to the public.

MR PECK: Commissioner, it may be extraordinary to you but - - -

PROF SLOAN: I'm just a member of the public when I say that. Surely that is confusing for people.

MR HAYSOM: But, commissioner, the education process doesn't end at the school, getting that bachelor - - -

PROF SLOAN: Of course not, but so what?

MR HAYSOM: There's another two years of completion of the practical part of the architectural course. The fact is, the course really lasts for seven years, five years in a

tertiary institution and two years with the registered architect.

PROF SLOAN: People out there would not know that. We have had a situation where some state boards have taken people to court because they have written, "Joe Bloggs, bachelor or architecture." Let's forget the economics and the politics of it, is that not wrong? Is that not morally wrong?

MR McDOUGALL: Surely the inquiry made would reveal that if someone wanted to know what an architect was, they would find out that they had a degree and they also had two years of experience at least and they had passed an exam to enter this title called "architect", so that the fulsome nature - and it in fact also entitles them to go on and work in various areas - of that education process from a highly academic and highly design orientated course through to a coordination in practice, in offices, gives you the title and the right to say, "I have that amount of experience." The confusion may be in the promotion of that idea to the public, but confusion may be exacerbated by the fact that the registration boards and the profession generally are not making this well known.

PROF SLOAN: That's a very telling point, you saying that.

MR McDOUGALL: The lack of promotion of that doesn't undermine the issue that a properly qualified and integrated education course and past allows someone to become an architect. There is a difference between a bachelor of architecture and an architect.

PROF SLOAN: This is, in a sense, not unique to your profession, dare I say it. Plenty of other professions have years of university, doing specified courses, professional units, professional exams, and they don't have statutory registration. What you say is fine, but I don't really see that it provides any justification for an architects act.

MR PECK: Commissioner, that's an interesting opinion and no doubt it will affect your findings. However, the system that we have here is consistent with most of the other developed countries in the world and there is, broadly held, an agreed position that architecture requires five years of undergraduate study, two years - - -

PROF SLOAN: All with slightly different models. That's changed over time, yes.

MR PECK: - - - of internship, and then the passing of a practice exam in order that that person is capable to be set free on the public as a practitioner. That is a very wide international benchmark and whilst you may differ with that being an appropriate methodology for training architects to be set free - - -

PROF SLOAN: No, I've got absolutely no problem with the methodology and I'm sure the methodology will continue. It really goes back to why would the government want to be involved and does then that generate benefits greater than costs and are there alternatives?

MR PECK: I think that's a very important point because - - -

PROF SLOAN: It is a very important point, but we're not here to query the nature of the training.

MR PECK: It sounded as though you were.

DR BYRON: My point was that in your earlier presentation, you were making a black versus white distinction between there were those who were untrained and unqualified and there are those who are architects, and it's absolutely clear-cut, black and white, and everybody out there knows that. That is not the information that we're getting from the public polling that we've been doing. The perception out there, there's an enormous range, a spectrum, from the incredibly good, gifted and talented, through to the good, the average, the substandard, and the absolutely terrible.

MR PECK: So we have an information problem and therefore you're recommending the abandonment of the whole system.

DR BYRON: We're proposing - - -

PROF SLOAN: A better information system.

DR BYRON: - - - a far more informative system that differentiates to all prospective clients and consumers out there who are the good, the bad and the ugly, or the incompetent, in a much more informative way than the current system that simply says, "This person has once in their life passed a test of adequacy and an assessment that if you like is backward-looking in terms of, "What have you done, how many years have you spent with your bum in a seat in a lecture theatre, and have you had the two years and so on'." It's not based on a test of, "What can you do, what are your skills, what do you have to offer, what is your excellence or competency?" It is backward looking rather than forward looking. There is a trend throughout the world across all areas, all disciplines, and I'm sure it will one day catch up with architects too towards competency-based assessment rather than 19th century views of credentialism.

MR PECK: I should point out, commissioner, that we already have competency assessment. Anyone can enter this profession through competency assessment. Anyone can enter this profession through competency assessment.

DR BYRON: Can you tell us how many do each year?

MR PECK: No, I can't, but - - -

DR BYRON: Could you hazard a guess, whether it's more less than a thousand or a hundred or 10?

MR PECK: Well, it's not many, and for the very simple reason; that to attain the knowledge and the ability and the skill that is required takes a lot of hard work; 3500 hours of design, education in a typical undergraduate course. So for someone to achieve that level of competency without formal training is very difficult so that's why - but there is no barrier to anyone who can demonstrate competency from becoming registered as an architect under the existing system.

PROF SLOAN: It does look like a bit of a Mount Everest, one might add, and maybe that's right, but I mean, I think more to the point that we really see in fact the system not adding much to the information base and there being a possible negative. The fact is that if someone registered in 1956 and has since done something completely different, perhaps even driven a taxi, that person, as long as he or she pays the 80 or 100 dollars a year, remains a registered architect and has a legal right to use that title, and that provides no differentiation because the market is completely ignorant, Michael. You tell me they rely on this. That person is not differentiated from someone who registered in 1998 with lots of ideas and lots of current up-to-date knowledge.

MR PECK: Commissioner, I - - -

PROF SLOAN: Secondly, there may be some kind of implied government guarantee of competence by virtue of it being statutory based.

MR HAYSOM: Commissioner, perhaps there might be a misunderstanding here. We are not defending the present system. We are not defending - - -

PROF SLOAN: We have to assess the current system though.

MR HAYSOM: But we are not defending that. In our submission to you we have suggested that there is a better system. What we don't agree with is the complete deregulation of the whole system.

DR BYRON: We haven't proposed that. We have never even entertained that. We have suggested the repeal of the act to give reservation of title. That is not deregulation. There would still be hundreds of regulations out there that affect what architects and other building service providers can and cannot do. We don't use the word "deregulation" at all. We're talking about the repeal of the acts that give reservation of title.

MR PECK: I think, commissioner, we have ably demonstrated in our response to the issues paper and our response to your draft report, that that other legislation doesn't achieve what you claim that it does achieve. All it does is achieve absolutely minimum standards of health and safety. That's all it does. So it's not - - -

DR BYRON: But that's a lot more than what the Architects Act - - -

MR PECK: So it's not easier to say - - -

PROF SLOAN: What do you think the Architects Act then offer? Aren't they also minimum standards? I mean, there is no ongoing assessment of competency, there's no requirement for someone to carry insurance - - -

MR PECK: But under the current system that's true, but I was interested in your point about this barrier that we go over to become an architect and it came to my mind, I wondered when each of us here got our driving licence.

PROF SLOAN: I remember the day well.

MR PECK: Yes, and how is your competency these days?

PROF SLOAN: Excellent.

MR PECK: But we haven't been constantly evaluated. I mean, why attack the architectural system when this is a common methodology in society for acknowledging recognition of qualification.

PROF SLOAN: But that's not a good example, is it, a driving licence, because if I do drive badly I stand a good chance of being picked up by the police. Indeed, some of my friends who are rather prone to speed have lost their licence. It seems to me that you really don't have a police force out there. When we have assessed the actual workings of the Architects Board it seems to be being an incompetent architect is probably not likely to see you deregistered, and a very trivial number of architects have been deregistered over the years and they seem to often be deregistered because they're murderers or they're small Alan Bonds and the like.

MR PECK: Continuing the analogy of the car driver, how many people drive cars on the road as against those that get penalised for faults? The reason that that is a very low proportion is that most people are law abiding citizens and drive safely. The reason that there's a low number of people that get hauled up before the Registration Board is because that system is in place, they maintain their standards.

PROF SLOAN: But there is proof of that. I mean, an alternative hypothesis is that there are lots of incompetent practices around. People either don't know about the Architects Board, but if you try to run the gauntlet of the Architects Board - and we have had people who have made submissions to us who have tried to do thus. It is very difficult. The boards themselves tended to be absolutely dominated by architects. Until recently - well, only some have independent disciplinary procedures and those people who have tried - and of course they can't offer any restitution in any case. These people have not been happy with their experience of the Architects Board and come away with the impression that this is in fact a closed shop with the profession protecting the profession.

MR HAYSOM: But we're not defending that. We are advocating a method of coregulation.

PROF SLOAN: Then you're making our job hard because we're here to assess the acts as they are.

MR PECK: But your terms of reference require that you look at alternatives.

PROF SLOAN: Yes, I know.

MR PECK: We have put forward alternative arrangements.

PROF SLOAN: So in other words you do agree with our bottom line, that the acts don't generate benefits in excess of costs.

MR PECK: No. What we do agree with is that many of your findings are well founded.

PROF SLOAN: Right.

MR PECK: We have identified those and there are some of your findings which are not so well founded and we're putting it to you that further research would discover that you're more inclined to agree with the proposition that we're putting forward as a way forward.

PROF SLOAN: But let me put this scenario to you then: if the choice is between having this, you know, ramshackle inadequate set of state acts and going for - where the RAI is likely to have the box seat, a forward-looking strategic national self-regulation, you're telling me you would prefer the continuation of the existing acts.

MR PECK: No, we're not.

PROF SLOAN: Good.

MR PECK: We're not arguing for that.

PROF SLOAN: They have been jolly hard to amend though, haven't they?

MR PECK: I don't know. I can't - - -

MR McDOUGALL: Is it because the studies that have been done have found, as Michael has attested, that they're not perfect, but they are actually effective in identifying who an architect is, what their training is, and the feedback is the scenario that Michael painted about minimum amounts of dissatisfaction, attest to their worth.

PROF SLOAN: Of course minimum amounts of dissatisfaction might be associated with minimum amounts of knowledge. I mean, you can't be dissatisfied

with

something that you don't know anything about.

MR McDOUGALL: There are a lot of anecdotes that we can - - -

MR PECK: Commissioner, could I suggest that we have in our written report, and I don't know whether you have had time to - a response to analyse that - - -

PROF SLOAN: Yes.

MR PECK: And since this is a hearing at which we're trying to discover fact, may be progressed by not debating issues but where we can provide information to you, we would be very happy to do so.

PROF SLOAN: That would be useful.

MR PECK: Can I come back to the central point which is that the commission as I understand it has to establish that there is anticompetitive arrangement in place here and this is a fundamental requirement I would have thought for the recommendation for the repeal of legislation. We can't see where you have demonstrated that there is an anticompetitive arrangement in place. On your own findings in here you find that the market is extremely tough. In the evidence that we have submitted in regard to the CSIRO report there has been, according to that research, in real terms a decline of 24 per cent in architects' fees in the last 15 years in real terms. So I would have thought that a reading of the evidence would indicate that there is no anticompetitive arrangement operating and therefore it's very hard to understand why there would be a recommendation for repeal.

PROF SLOAN: I think you slightly misrepresent our conclusion which is that the anticompetitive elements are small. We don't say they're zero. They come from reservation of title, but particularly reservation of derivatives. The interesting thing about these public hearings is that we have been actually able to unearth some additional anticompetitive elements which operate in the market. For example, reservation of competitions for registered architects, reservation of design prices to registered architects, other pieces of legislation. In my state for example under the Liquor Licensing Act renovations to hotels can only be undertaken by architects. Now, the interesting thing is that when that person drafted that piece of legislation they probably didn't realise that "architect" of course is a legally reserved term and so the architects have got a monopoly on renovations of pubs in South Australia.

MR PECK: Commissioner, I must take you up on that. All that is, is an exercise of consumer choice. Under your proposal where architects are only identified by virtue of being membership of the RAIA, all those consumers would do would say the only people that they wish to submit for these designs or that they wish to select for their work are people who are members of the RAIA because they are identifying people who are qualified and able, and that is the consumer choice to use them and to create the competition amongst them for the work that they have to hand.

PROF SLOAN: But the point is that the anticompetitive elements do derive from the fact that the term "architect" is legally reserved, so in fact probably my - I mean, we haven't had our full set of meetings and come to a conclusion, is that the evidence is now stronger in my mind that these Architects Acts do generate anticompetitive consequences and we should be concerned. I mean, I hear what you say, but bear in mind, Michael, you have told me that this market is completely ignorant which I really think, and which seems to contradict what you said, professor, that in fact the market is quite savvy. I mean, if you have evidence of that I think we should know, because in fact as we go around one of the common questions we ask people, architects, building designers, like, is how do they get their work. In fact, it seems to be quite sophisticated market search process and people ask for all sorts of questions, most particularly, "What have you done? Can I go and have a look at it." The idea that we have this mass of ignorant consumers out there seems to me an implausible assumption for us to work from.

MR PECK: Just for the record I didn't say "completely ignorant market".

PROF SLOAN: You did use the term "ignorant".

MR PECK: I said "uninformed".

PROF SLOAN: No, you used the term "ignorant" because I wrote it down.

MR PECK: And I didn't say "completely" so let's not - - -

PROF SLOAN: I wrote down "ignorant".

MR PECK: "Ignorant", yes, but not "completely ignorant".

PROF SLOAN: I don't know about that. I think "ignorance" is about the bottom of the barrel, Michael. And I think this is a very important point. Who are we protecting out there? We have written in our report a kind of, how shall I put it, caricature - no, caricature is wrong - a sort of stereotyping of the market, okay? Now, if you think we're wrong tell us. The market seems to run like this. You've got the top end of town, big commercial work, big public sector work, all right? They are savvy consumers, right, and they almost always use architects.

MR PECK: Yes.

PROF SLOAN: Right? Agree on that? The residential end of the market, not much involvement by architects, dominated by project home builders, the building designers, and a bit of architects, but at the top end high value end of the market. Are those silly consumers, people who are using architects in the residential end? Is that the ignorant section?

MR PECK: No. I think what we're addressing here is the question of informed consumer and market knowledge, right?

PROF SLOAN: Yes. But are they ignorant? I just want to know where these ignorant consumers are.

MR PECK: Well, they exist right through the profile - - -

PROF SLOAN: If someone is going to build a \$400,000 house are they an ignorant consumer?

MR PECK: They exist right through the profile, commissioner, and I don't know whether you had time last night to get into the mind of an architect but you - - -

PROF SLOAN: I did.

MR PECK: - - - but you would have discovered there the level of knowledge of even the most sophisticated client in dealing with an architect and the need for the process to inform the consumer, and that's what we're talking about when we talk about uninformed consumers.

DR BYRON: But there was also a statement in that show last night - and I don't want to do a movie critique or anything - but - - -

MR PECK: It was pretty good though, wasn't it?

DR BYRON: There was a statement in there about - - -

PROF SLOAN: Well, what can I say?

DR BYRON: - - - clients - I think I wrote it down - needing to do their research in selecting who was the right architect for them or words to that effect, and that was entirely consistent with what I had expected and what we've been told across the country. If I wanted to put up, you know, a \$400,000 beach house or something, I wouldn't just knock on your door and say, "Are you registered with the state Board of Architects? Yes? You'll do me, mate" - end of story. I would ask questions. I would want to do some sort of research. Even choosing amongst registered architects - - -

MR PECK: That's the point.

MR McDOUGALL: That's the point.

MR PECK: That's the point.

MR McDOUGALL: But the initial choice is the decision to identify the architect as an entity.

PROF SLOAN: They may not though. I know people who have - - -

MR McDOUGALL: Bear with me here.

PROF SLOAN: - - - thought they'd use an architect and ending up using a building designer. So you should be careful with that.

MR McDOUGALL: But just to return to that point, there is that initial decision about identifying a professional group who they believe represent a particular training and standard. Then, sure, the study is then to see which one suits characteristically or in experience.

PROF SLOAN: But why are they ignorant then? I mean, surely people - I mean, it seems to me that if you're saying that there are people out there who write out a cheque for \$400,000 based on no more information than that someone is a registered architect, there is no piece of legislation in the entire world that's going to save that kind of person.

MR PECK: No.

MR McDOUGALL: We're not suggesting that.

PROF SLOAN: And I just actually don't think they exist.

MR McDOUGALL: But maybe - I mean, this is - maybe there is the issue that once one part of the activity of that group who call themselves architects or are registered architects who operate in - is in an area that the purchaser of the service is not the only person affected by that group - the architects - and the architect's training is actually about something bigger and they spend quite a lot of time on expecting and generating the courage and ambition to do things bigger than the actual purchase of the service. So part of their training is about that, looking at a community - - -

DR BYRON: The spillovers and externalities.

MR McDOUGALL: - - - good - a community good.

MR PECK: Externalities and spillovers, yes.

MR McDOUGALL: So the idea that someone who then - the purchaser of that service then decides that they will have an architect, not in full awareness of exactly what they're going to get, and the expectation may be - I'm speculating, but the expectation may be that they actually want that, and maybe the show last night showed that in a couple of instances, the people in the house and their first night there going, "We didn't even realise it was going to be this good," that in fact from the point of view of the broader community, the architect is being trained in providing a service which is much wider than just the purchase of the service. I mean, I'm just thinking from the point of view of - - -

PROF SLOAN: I honestly don't understand that. I really - - -

MR PECK: But, commissioner, I can't understand - - -

MR McDOUGALL: Well, if I can refer to my limited knowledge of the idea of a community that looks after its weakest participant - I think it's a Nugget Coombes idea, but in fact when the architect acts and is asked to provide a service, they provide something which is for the people who purchase the service, who use the building - they are not the purchasers of the service - who in years - - -

PROF SLOAN: Well, they can be.

MR McDOUGALL: I'm talking about in a broad - like in a commercial building or a public building and people in the workplace, the people who walk past it in the street, the people in the future once that original service purchaser has left, are using the building, all of those things, the spillovers - - -

PROF SLOAN: That's true for anyone who puts up a building. I don't see why architects are so special.

MR PECK: Well, architects are special - - -

MR McDOUGALL: That's what they're trained to do.

MR PECK: - - - because they have - - -

PROF SLOAN: They're trained to be special.

MR PECK: No, because they have knowledge, and the taxpayer invests in the community of architects.

PROF SLOAN: It seems to me - it's interesting, and I suppose this is precisely what you didn't want to happen, is that it seems to me that the architects have broken ranks in this inquiry and there are points of view all over the place, including the academic over in Perth who says of course architects know absolutely nothing about town planning, and if you're really interested in creating buildings which are consistent with a streetscape or whatever, then an architect is not your person.

MR PECK: I think in respect of that, you'll get a version of views, but - - -

PROF SLOAN: Well, you are using titles - - -

MR PECK: - - - I think you've got to - yes, but your findings must be based on the evidence and not just selecting particular people who say particular things to support a position.

PROF SLOAN: That's true, but a lot of your evidence is not evidence, but actually just assertion.

MR PECK: Well, challenge us.

PROF SLOAN: I mean, it really is I think quite frightening, and dare I say a slightly offensive assertion that the market is ignorant. I mean, it just seems to - I mean, I just don't think there is any evidence around, and as I say, we ask our architects, we ask building designers how they secure their work, and it really seems to be the process of quite an extensive search process, and of course at the high value end, through repeat business.

MR HAYSOM: Commissioner, can I just ask - I mean, we've talked about this residential market, but I must say that I fail to see where there is an anticompetitive element in it by virtue of the Architects Act. I mean, everyone is competing, and the consumer makes the decision about whether to go to an architect or go to a building designer, but what they don't do is they don't go to a building designer thinking that the building designer is an architect because - - -

PROF SLOAN: That's right, because the acts are there?

MR HAYSOM: - - - the statute - because the acts are there.

PROF SLOAN: Really?

MR HAYSOM: Because that protects it.

PROF SLOAN: What's your evidence for that? We've had the building designers give their evidence, and of course they have now got very well organised essentially through self-regulation to create a label, and apart from wanting to use the derivative, particularly the fact that they've got a diploma in architectural drafting, they are not wanting to call themselves architects.

MR HAYSOM: Building designers, commissioner - - -

MR PECK: Commissioner, I think we should pick up on the label. What does the label mean? Can you define it?

PROF SLOAN: The label means what they are promoting it to mean, and as long as the customer understands it, that's good.

MR PECK: We don't understand it, they don't understand it. They don't even have their own competency standards. They admit anyone to membership who applies.

PROF SLOAN: Yes. Well, if you - - -

MR PECK: So that label is meaningless.

PROF SLOAN: If you'd listened to their evidence before you would also hear that they have now very strict standards of professional development encouraging people to lift their standards.

MR PECK: Yes.

PROF SLOAN: There's nothing out there to prevent people working as you know, as your submission tells us.

MR McDOUGALL: We're not trying to - - -

PROF SLOAN: There's nothing saying, "Ye shall use an architect." There's nothing to say, "Ye shall use a building designer," but here we have an attempt by an association through self-regulation to try and build some brand identification and to lift standards. I don't see why you would be critical of that. Surely that's good.

MR PECK: Of course we're not critical because we do it ourselves.

PROF SLOAN: Yes, through self-regulation.

MR PECK: Our brand is very high value brand because the members of the RAIA have all the qualifications that we're talking about and continue to improve their skills through professional development and so forth. We're right into branding and understand the benefits of branding.

PROF SLOAN: Pleased to hear that.

MR PECK: But we're here not to talk about the RAIA, we're here to talk about the benefits to the community of a system that enables the community to identify the qualified supplies of a complex service.

PROF SLOAN: Yes, okay.

MR PECK: And the issue of information is important particularly in the operation of markets because as you know, and we all agree, an informed consumer when they come to buy this glass can walk around, pick it up, look at it, feel it and decide at \$2 whether it represents value or not. When you go to buy an architectural service, you cannot at that stage define whether you're going to get value or not.

PROF SLOAN: That's true of all sorts of things surely. It's true when I go to a motor mechanic as a matter of fact.

MR PECK: The professions in particular.

PROF SLOAN: The point is you shop around, you establish what is fair value. You might even look at non-architects for example. So it's not an ignorant market.

MR PECK: The transaction costs for a consumer in a situation where you've got a completely unregulated market are far higher than in the market that we're talking about where the qualified are identified.

PROF SLOAN: Well, you assert that.

DR BYRON: We're still talking about a system where the qualified are identified, but the really good are distinguished from the really mediocre to the really substandard, and we're talking about a system that provides more information, better quality information to the public, but does it on a non-statutory basis. We're not envisaging an absence of information or a totally uninformed marketplace, which is an oxymoron in itself.

MR PECK: Can you identify for me - because we've been trying for years to do this - as to how you inform the consumer when you've got a market as we've pointed out to you where the consumer is unidentifiable? You can't tell me that - you can make a lot of money this way. If you could tell the architectural profession where the next client is, whether decisions are being made in the boards or in private homes or whatever that they're going to build and they need a designer, you'd be on to an absolute winner. You can't identify the market.

PROF SLOAN: But you're pretty good at doing that. I mean, I'm surprised the whole thrust of yours seems - I mean, why be a shrinking violet - - -

MR PECK: I'm sorry, I was trying to make a point, commissioner.

PROF SLOAN: - - - about your organisation.

MR PECK: Can I finish the point and then you can - - -

PROF SLOAN: That's what you do, isn't it?

MR PECK: Can I finish the point and then you can - - -

PROF SLOAN: Don't be a shrinking violet about it.

MR PECK: The point that I was making is the market cannot be identified and therefore to inform that market you have to inform the whole of the community, and the majority of the community, the vast majority of the community are disinterested about receiving information because they are not in the market for it, and so they don't want to receive it. It's a very, very expensive exercise to keep up a campaign that raises that level of awareness to create the informed consumer that you believe will make an effective market. It's a virtual impossibility, and I think that this is the

sort of

issue that this inquiry should be addressing, and it's not. It's not addressing those hard questions. It's just simply saying, "It's too hard. We can't measure it. We can't measure benefit, we can't measure cost. Therefore the best way to do it is just to get rid of the legislature."

PROF SLOAN: So you're saying the consumers don't know about the Architects Act or the Architects Board. So how can that then be generating benefits?

MR HAYSOM: But they do know about - - -

MR PECK: But they do.

MR HAYSOM: They do know about the word "architect". They might not know that there's a board, but they do know the word "architect".

PROF SLOAN: Although we've heard there's a lot of confusion about this, too.

DR BYRON: There's a narrow legal definition of the term, meaning someone who is registered, and then there's a broad - - -

PROF SLOAN: There's a vernacular.

DR BYRON: - - - generic vernacular sense that people who - - -

MR PECK: That the architects are a political idea.

DR BYRON: George Speight, the architect of the coup in Fiji.

MR HAYSOM: Well, it is an English word.

DR BYRON: International financial architecture. Who asked me about who was the architect of this inquiry?

PROF SLOAN: Always I would say - - -

DR BYRON: No, but the word has a common usage.

MR PECK: Some of the Latin countries get around the issue by the qualified person having the title in front of them; so Architect Neil Byron. It's non-horrific or something like that.

DR BYRON: I think Germans do the same thing.

MR PECK: So they get around it like that, but in terms of what it means internationally, it's all very well understood. "Architect" means someone who has qualified in architecture, done internship and been registered.

PROF SLOAN: We had a happy consumer come to see us in Brisbane and we haven't had many consumers, full stop. We've had a few unhappy ones, too, and we asked her - she was a one-off user of architectural services, and how did she get the architect? Through your organisation - did a very good job. She rang through to the Institute of Architects. She said these were the requirements, and lo and behold they said, "Well, that's what you want. Here are four." More information - "Four kind of architects that would suit your purpose," okay? So she wasn't given a list of hundreds which she might have got through the board. She got the information through you.

MR PECK: A very good example, because think of the consumer in the deregulated market who has the Royal Australian Institute of Architects, the South-West Pacific Register of Architects, the Do-It-Yourself Architects Register, the Building Designers Architects Register, all these registers of architects: how do they work through all that information to get to the facts of the matter? They want a qualified person.

PROF SLOAN: For their purpose.

MR PECK: Yes.

PROF SLOAN: We have accountants. They don't have statutory registration, and they actually have a number of representative bodies. In fact, it's quite a good example of Neil's because there's the chartered up the top and the Institute of Accountants - - -

MR PECK: Yes, but you see, you mention accountants and you mention engineers, but there are some other pieces of legislation that actually control the practice of certain accounting procedures and there are other pieces of legislation that control the practice of engineering. You cannot get a building permit unless you have used an engineer from a particular description, a qualified engineer, to produce your computations and your calculations.

PROF SLOAN: Exactly, because that is a direct instrument achieving a particular directive.

MR PECK: So maybe we could do a trade-off. You could arrange - - -

PROF SLOAN: The Architects Acts - don't interrupt me - are a very indirect means of - I mean, I find some of it a bit much, to tell you the truth. It's partly because we've been doing this for too long and that's probably why I find it a bit much, but to say that architects are sort of the font of all knowledge about sensitive environmental design is simply not right, and some of your architectural friends have admitted exactly that. There are building designers out there who specialise precisely in that.

MR PECK: Yes, but there are subjective things. We should be dealing in this inquiry, I believe, with hard evidence.

PROF SLOAN: Yes, but you mentioned this as if this was something that should sway our thinking.

MR PECK: No, the proposition that we're putting to you is that in Australia and in most of the other countries there is a method of training people to be qualified in architecture and it is appropriate that the consumer is readily able to identify those qualified people. There's a public interest in that.

PROF SLOAN: The first bit is clearly true. Now, this letter that you've got from Denton Corker Marshall, did you seek that letter?

MR PECK: Yes.

PROF SLOAN: Yes, all right. It seems to me that of the two cases, you might say, of the case for domestic regulation as opposed to some international reason, the latter is much stronger than the former. It's clear from our report that we say that. The thing is, I've now got very confused. We had the ACA representatives in Sydney come to see us - big end of town, a lot of overseas work - and they tell us that they've never been asked for their certificate of registration in the work they secure overseas and they are securing repeat business overseas, big contracts; whereas you've solicited a letter which really has no opportunity cost for them to write, although one would hope that what they're saying is absolutely factually true. What am I supposed to believe?

MR McDOUGALL: What's the detail of the lack of inquiry? For instance - - -

MR HAYSOM: Perhaps I can answer that. Commissioner, there are two aspects to exporting architectural services. The first one is where an Australian architectural firm will provide partial services to an overseas client or an Australian client working overseas. In that respect the work is often done here or is secured here and/or in the country in question. The health, welfare and safety part of the work, which is the contract administration, and the documentation is often done by another party, which is usually registered and licensed in the country.

That is a different requirement from the work and the export of firms like Denton Corker Marshall, who work in an international area in international competitions and with other governments. There is a significant amount of work coming out of foreign governments such as Singapore, such as work in the UK, in the EU, for example, and it's that work which is really defined by the licensor and registration.

PROF SLOAN: These people were doing that kind of work and they've never been asked. Neil, you might give your example of when you lived in Indonesia.

DR BYRON: I was thinking about an international organisation needing a new headquarters that ended up costing us \$US15 million and we interviewed architects from eight countries. I assume that they were all registered architects because I never

asked any of them. We eventually chose an Australia architect, not because he was registered in the state of Queensland but because we'd seen his work in Bali and Malaysia and thought that that was the sort of concept that we were after. I phoned him a few weeks ago and asked him how many times in all his Asian business has he been asked, "Are you registered in your home jurisdiction?" and his answer was "None."

MR PECK: But that doesn't prove anything. They may well have made their own inquiries.

PROF SLOAN: But you've got one letter - - -

DR BYRON: Precisely my point.

MR PECK: Made their own inquiries to satisfy themselves that this person's bona fides were correct, that they were registered and they are - - -

PROF SLOAN: But Neil didn't. He was the customer.

DR BYRON: My point was that the work that he was getting was based on what he delivered, the quality, the reputation. People could see, they could talk to happy, satisfied clients etcetera, and that was the basis on which he was successful in winning that job and others, and the fact that he may or may not have been registered in a somewhat rickety old Queensland state reservation of title system was totally irrelevant. I find it very hard to imagine that this rickety old thing called reservation of title in the 1927 Architects Act is the pillar on which all our export of architectural services is based, because it's a very, very flimsy pillar.

Everything I see, including the TV show last night and last week's Sunday Age and so on talking about how highly respected Australian architecture is all over the world for its innovation, its quality, its genius and all the rest of it - I can't imagine that that would just evaporate overnight if Australia was to change from a 1920s system of reservation of title to a modern, dynamic, progressive, informative system of self-regulation which was much more effective. I can't imagine why anybody in the world would think, "My God, all those skills and qualities that we admired yesterday don't exist any more because they've changed from statutory reservation to non-statutory regulation."

MR PECK: Commissioner, thanks for that. I think that shows your attitude rather than the fact of the matter. You see, that architect that came out of that rickety old system in Queensland is a system, whether you think it's rickety and old or not, which has produced Australian architects of distinction. These people have been trained, because they've needed to be trained, through undergraduate education, through the system that we've described to you time and time again. That's the way they have got their knowledge, skill and ability, and as a result of that system we've got world eminent architects. What you're saying is that if we abandon that system you can't see why it would reduce the quality of Australian architects.

PROF SLOAN: Michael, you're misrepresenting what Neil said. He's not talking about abandoning the training system; he's talking about abandoning these silly things called Architects Acts, a completely different issue.

DR BYRON: I would suggest that they've got their skills partly from the education, partly from their experience and partly from their genes perhaps, I don't know, but I don't think they got their skills and their qualities and their excellence because of the reservation of title in state legislation. I don't think the reservation of title in state legislation is the sine qua non for their skills, their expertise.

MR HAYSOM: But, you know, the interesting thing is that we are competing in a world market with American architects who have all that and more, and licence of practice as well.

DR BYRON: So because we compete with them in foreign markets we should have the same regulatory systems as they have?

MR HAYSOM: One of the interesting things is that the American Institute of Architects and the American architects are in a position where they are highly respected in the world through a system similar to ours and are exporting their services all over the world. The thing is that the system, even though it is rickety and does need a paint job and a refurbishment, has produced a quality of architecture out of this country which is pretty good. To remove that system entirely, why would you want to go for seven years to a university when you can just put your title up and call yourself an architect?

DR BYRON: I don't think that the reason that people go to university is because they want to get a statutory reservation of title. I spent myself nine years as a university student, not because there was a state registration board that was going to give me exclusive use of a particular word.

PROF SLOAN: You can call yourselves economists, because that's not a legally reserved title, and I could not give a fig, because I know that two or three questions down the track the person would understand that you're not really an economist or you don't have real skills and I'm so much better than you. I couldn't care. I can't understand why your profession is so insecure, I suppose, that it seems that it needs the stamp of the government.

MR HAYSOM: But if it was just Australia you could understand that, but why is it - - -

PROF SLOAN: So it is the international argument you're now resting your case on?

MR PECK: The Australian system evolved from the international system.

PROF SLOAN: Did you want to say something?

MR McDOUGALL: No, no.

PROF SLOAN: Do, by all means.

MR McDOUGALL: We can get into lots and lots of anecdotes. We're trying to find the sort of stream of truth here.

PROF SLOAN: Another question we've asked people quite regularly is say, "Why did you become an architect? When did you decide to become an architect?" The answer seems to vary between the age of five and 10. Now, you can't tell me that 10-year-olds are aware of a statutory registration system for architects.

MR PECK: No, but they wanted to be an architect.

PROF SLOAN: Yes, and it caused many frustrated architects out there who can't get registration.

MR HAYSOM: The point is, commissioner, that they wanted to be an architect.

PROF SLOAN: The idea that the numbers would fall off applying to do architecture is laughable. I mean, there are commerce courses, law courses - but commerce courses are a good one - accountancy: there's no reservation of title, there's no statutory registration of the term. It's an extremely popular thing to do. People do these things because they're interested in them and, dare I say, in terms of architecture, they're passionate about it.

MR PECK: That's right, precisely.

MR HAYSOM: But these are not true comparisons. There are different systems operating.

PROF SLOAN: Yes. That's our point.

MR HAYSOM: The 10-year-old, the five-year-old, the person that wants to become an architect, then starts to investigate what that means, and that's why they do the five years of education etcetera etcetera and become an architect. If they said they wanted to be an architect and it only meant they needed to go out the door and put "architect" up, then that's what they'd do.

DR BYRON: I think you're belittling your own profession there.

PROF SLOAN: Exactly. That's an extraordinary thing to say, and how could you go along it? You're saying that those five plus two years mean nothing, that they're not valuable - - -

MR HAYSOM: No, I'm not saying that.

PROF SLOAN: Well, people would continue to do that. The idea that it's just a credential, it's just a screening device, is an extraordinary thing to say. People would continue. It's quite a hard course to get into. People will continue to stream into the course.

MR PECK: But our advice to the commission is that wouldn't be the situation. If you removed the statutory obligation to train in this way to become an architect, then there would be a significant decline in the number of people that went through that procedure of gaining that knowledge and capability.

PROF SLOAN: I find that absolutely extraordinary. So you're really saying you don't need to do it.

MR HAYSOM: No, we're not saying that.

PROF SLOAN: It's not valuable, people don't see it as valuable. I just think it's extraordinary that you should say that.

MR HAYSOM: We're not saying that at all.

PROF SLOAN: I mean, Neil and I went through years and years and years - more years than these - to become economists. There's no reservation of title, and we did it because it was a valuable thing to do and I could only be competent in my profession if I did that. I didn't need some law of government registration.

MR PECK: Yes, but there was an established system for you to acquire that knowledge and procedures set in place that caused you to do that, and you followed it through because that's what you wanted to do. Now, the people that we're talking about are people who want to be architects, right, and so they will follow the system - - -

PROF SLOAN: They want to learn the art and practice of architecture, don't they?

DR BYRON: I would have expected you to say that architects are people who want to be the best they can possibly be, they're people who want to excel.

PROF SLOAN: And to contribute to the built environment.

DR BYRON: They don't aspire to be mediocre. They don't say, "If I can get a ticket in two years, I'll just do two years' worth of knowledge and then give up once I've got my ticket." They are people who are driven by a search for excellence and a quest for innovation.

PROF SLOAN: And they continue to learn.

DR BYRON: And they continue to learn long after they've got the ticket.

MR PECK: But you've also had evidence from a whole lot of other people that claim to do the same as architects.

PROF SLOAN: No, they don't.

DR BYRON: They expressly say they don't.

MR PECK: They might say that to this commission - - -

PROF SLOAN: I see.

MR PECK: - - - but they say in the press that they do the same as architects.

PROF SLOAN: Okay. I honestly don't see that as very useful.

MR PECK: And they say to the community at large that they provide architectural services and they do the same as architects. Now, these people, why haven't they chosen to follow the course that you suggest, of getting properly educated to do it? They've taken another route, and our argument is that if that other route is available, then more people will take it.

MR McDOUGALL: And added to that, it's the issue of the confusion it causes. At the moment there is a cultural understanding - - -

PROF SLOAN: And misunderstanding.

MR McDOUGALL: It might be varying degrees, from highly sophisticated to understanding that a person who is an architect has this training and has an expectation of certain cultural obligations, I guess; whereas if you get rid of the structures and don't adopt what we're suggesting, then you'll have a confusion, because there will still be people who will go through the courses.

DR BYRON: How long do you think the confusion would last?

MR PECK: A long time, given the problem of informing the community.

DR BYRON: See, my hunch, intuition is that in the absence of reservation of title and state boards that those architects who really are - have all the skills and the gifts and the talent, experience, expertise, etcetera, would say, "There are all these Joe Bloggs down the road who can now use the word architect. How do I differentiate myself from those people? How do I explain to my prospective clients, the ones who don't already know me, just how much better I am than all the rest of them?" I think it would take a matter of weeks or months to set up a very informative mechanism for

informing people that, "We are the ones who are, you know, the association of really exceptional architects," or whatever you call it. There would be a mechanism for communicating that differentiates.

MR McDOUGALL: Is your proposition that the rest of the people who don't understand that, who then get - you're encouraging the confusion, making the confusion even worse. Just let them sink. Is that the proposition? There is a sophisticated group within the community who will shop around and look for the very best and those very best will be very successful and be overworked or whatever but the rest of the people, we don't care about them and it might be months or weeks or it might be years. It might be generational before the understanding of the - - -

PROF SLOAN: Well, hang on, that's really how the market works. I mean, the best do best don't they?

MR McDOUGALL: I just wanted to understand that, that that was the proposition; that the - - -

PROF SLOAN: I don't think we're in a sort of directing business to the weak.

MR McDOUGALL: You just cut the rest of the community off.

MR HAYSOM: But how does it really work in practice? I mean, this system that we've seen in the accountancy is an ad campaign. I would imagine that people would use accountants a lot more than they would use architects, on a more regular basis. We know that the television campaign from the accountancy profession cost them millions of dollars.

PROF SLOAN: And why did they do that? Because the benefits were greater than the costs.

MR McDOUGALL: No, they haven't been able to prove that.

MR HAYSOM: They haven't been able to prove that.

PROF SLOAN: But that was the expectation.

MR HAYSOM: That's really what you're imposing on the community, is a campaign like that, for people who, as we have already agreed, are not listening. They only will listen at the time they go to purchase the service.

DR BYRON: At the time that they want to purchase a service they suddenly find the need to inform themselves?

MR McDOUGALL: And if they make the wrong choice because of the confusion and they get a certain way down the track which is what you're suggesting, there's considerable loss through that project due to possible lack of skill within the group or

charlatanism or whatever else you want to call it, but you're suggesting that may - that's an exceptional acceptable - - -

DR BYRON: If we accept that there is a vulnerable - - -

PROF SLOAN: That can exist at the moment.

DR BYRON: - - - group out there of poorly informed potential consumers who may at some stage need somebody to do building services for them - they're not sure yet whether they need an architect or somebody else, at the moment the information that they're getting under the existing system is pretty defective and I think all sorts of mistakes are being made in various ways. We're trying to think of a system that would more effectively communicate relevant information to those people who need information in order to make informed choices.

MR PECK: I am beginning to think that this is a discussion that is going on between two different points of view and you're proposing a system and advocating a system rather than an inquiry as to what will be best for the public. You're proposing a system and we're arguing against that system.

PROF SLOAN: No, just be careful. I think, you know - - -

MR PECK: I'm just trying to understand what this is.

PROF SLOAN: Can I go back to the point that playing the man is not the way forward. You know, we are appointed by the governor general and the treasurer, have given us this task, because the state governments have asked the federal government. All right, so you need to be a bit careful of making those kinds of accusations.

MR PECK: No, I'm concerned about the way this discourse is going because it seems to me that you are advocating a - - -

PROF SLOAN: But go back. You've got to understand National Competition Policy. There is a presumption against these pieces of legislation. We have to have that presumption, all right. The onus of proof is on those who want to retain these pieces of legislation. That's why it's not like previous inquiries where when the Trade Practices Commission looked at this amongst other professions they said, "Well, you know, not great but overall the costs aren't large so leave it there."

This is now a different angle. This is saying the presumption is that these pieces of law should not be there and you therefore have the onus of proof to convince us, first of all that the community benefits are greater than the community cost and that is the different task for you because you've conceded that they are weak. The second point, which is probably your stronger point; are there alternative mechanisms which don't involve anticompetitive elements which can achieve the objectives of the legislation better.

MR PECK: So this commission feels it has to make no argument for a recommendation for a repeal of legislation because the presumption is that it's anticompetitive.

PROF SLOAN: We can recommend that the legislation be retained and retained and amended but we have to get over those two threshold questions, right.

MR PECK: But my question was does the commission feel it has to make no case to prove that the current legislation is anticompetitive?

PROF SLOAN: No, really the onus of proof is on you to establish that the community benefits are greater than the community costs to the extent that the legislation involves anticompetitive elements. I do think you understand that by the way you've presented your submissions. I mean, the thing is there are certain discussions which at the end of the day involve certain speculations about the nature of the market and how it is now and how it would be and at the end of the day we probably can't fully resolve that because it's speculative.

That doesn't mean that - I think you've made an effort to put as much effort as you can, beyond what is just speculative. Can I just on a few minor points - your issue on these ownership restrictions. You go along with the AACA legislative guidelines, that they should go?

MR PECK: No, we don't. Our position is that it's in - - -

PROF SLOAN: The profession is quite divided, isn't it?

MR PECK: The position of the RAIA is that if a consumer wishes to purchase architectural services whether those services are provided by an individual or a corporation they should be the same thing. In other words they should be the same standard of service.

PROF SLOAN: Okay, so you are at loggerheads with the AACA legislative guidelines on this.

MR PECK: If you want to put it that way.

PROF SLOAN: Which recommend that the ownership restrictions be lifted.

MR HAYSOM: Our position is that we recommend that in respect of entities that are registered as architectural practices the services provided should be carried out by or under the control and supervision of architects and control of the practices be in the hands of architects as a majority of partners, directors or shareholders.

PROF SLOAN: So there is quite a lot of division of view on that particular aspect, isn't there? So you don't worry about those funny situations where husbands and

wives can't have registered - I know there's a difference - - -

MR PECK: No, they can.

PROF SLOAN: So you're all right. Not in every state.

MR PECK: That's just sole directorship situations.

PROF SLOAN: What about the case in my state where there was a practice, an icon of the state as a matter of fact, that was owned by a historian and an architect specialising in conservation, did overseas work and was prosecuted by the Architects Board because they called themselves an architectural practice.

MR HAYSOM: We're not defending that.

PROF SLOAN: But that is against the law. That's against the ownership restriction. You're saying you want ownership restrictions. It's interesting, when we went to the big end of town and, Michael, it's interesting that I haven't - notwithstanding some attempts - been able to get the big end of town much interested in this inquiry.

MR HAYSOM: What's the big end of town?

PROF SLOAN: You know, these big firms.

MR HAYSOM: Architectural practices.

PROF SLOAN: They're big architectural practices and we actually haven't got submissions from big architectural practices and they haven't come along to the public hearings.

MR HAYSOM: No, because they participate through the Institute of Architects as members.

PROF SLOAN: But plenty of small architects have come along. We've got plenty of direct architectural input but not from the big end of town. When I went to see some of them I heard about this, that a lot of the work is being - I didn't think this would be found necessarily in Australia, but a lot of architectural work, you might call it, is essentially being subcontracted out through the Internet, where specifications and the like are being drawn up - I don't know whether they're always by architects - in countries particularly like Thailand, Bangladesh and the like. I was talking to these big practices about that, thinking they'd say, "No, we don't do that," and they said, "Yes, we do that." Doesn't that kind of globalising effect call into even more serious question having some sort of ramshackle state based system?

MR HAYSOM: No, because what you're talking about there is documentation, is drawing, the design of which is controlled by the entity itself. It's not giving the

design out to Bangladesh or India or - - -

PROF SLOAN: Do you should disclose to the clients that that happens?

MR HAYSOM: I don't think it's relevant because, for example, in my office we have people drawing the drawings who are not registered architects, but they're under the control of registered architects.

PROF SLOAN: So you don't think you should disclose that at any point?

MR HAYSOM: Because the responsibility - - -

PROF SLOAN: When I write an article and I have a research assistant, I always thank the research assistant.

MR McDOUGALL: But do you acknowledge the photocopying company that prints the actual document and the binder?

PROF SLOAN: No, because they're not a person, are they?

MR McDOUGALL: Well, they may be. It might be hand bound.

MR HAYSOM: But in some of the larger projects you might have teams of 10 or 20 people working on it.

PROF SLOAN: I just wonder what the community might think if I started telling them this, you know. It's all getting very globalised, isn't it?

MR McDOUGALL: Look, assuming it's true - and maybe it's an urban myth, but assuming it's true - - -

PROF SLOAN: Well, they told me.

MR McDOUGALL: The fact that there is existing legislation and existing structures and existing cultural expectations of the work - that's the gate through which this material passed, so the responsibility still lies with the entity and it lies with the controlling architectural groups who do it. That's the issue.

PROF SLOAN: Do you think there are disclosure requirements? No.

MR McDOUGALL: I'm not sure whether it's - - -

MR HAYSOM: No, I don't, because I don't think it's relevant. It's the design that's relevant.

PROF SLOAN: I thought you might want to inform the - - -

MR McDOUGALL: Is this a sort of a side discussion?

PROF SLOAN: No, I'm just - you've got to ask yourself as things change rapidly - I mean, this is a big issue of where the Australian pieces of legislation fit in, let alone state pieces of legislation.

MR McDOUGALL: Exactly, in the maintaining of the gatekeeper, the maintaining of the responsible person. In fact, I would have thought actually it was more alarming if that gate is removed, because if you are going to buy services unregulated and unacknowledged - - -

PROF SLOAN: Well, there's nothing to prevent you doing that directly if you wanted to, nor could there be.

DR BYRON: What it still comes to is whether the gatekeeper, if you like, the ones who accredit and certify, has to be a statutory based body or whether - - -

MR McDOUGALL: That's why I thought it was a side issue.

MR HAYSOM: I am actually a registered architect in the United States and in practice there. We have a number of people producing drawings. My stamp has to go on the drawings and I have to sign the drawings and I have to sign the drawings, taking responsibility for them in that practice-based legislation.

PROF SLOAN: I was rather intrigued by what I think is not right, Michael, this issue that the market can't be informed of bad providers, dare I say it, architects or non-architects, by virtue of the defamation laws. You don't really expect me to take that seriously. I mean, if you say something true about someone, you're not defaming them. Secondly, you know yourself this is how markets work: "God, I wouldn't use Joe Bloggs because he's no good."

MR HAYSOM: Commissioner, I draw your attention to a very famous case a few years ago between Patrick Cook and Harry Seidler where Patrick Cook criticised Harry Seidler in a column, which I thought was - - -

PROF SLOAN: It just shows you how precious he is.

MR HAYSOM: And there was a defamation case.

PROF SLOAN: Yes, but I'm talking about word of mouth. Unless there's public utterance, you can't be caught up in the - I mean, just ask yourself, how does the market normally work? We have a big old house which eats up money and I'm always using building service providers. How do you think I access them? Through word of mouth and through black-listing some of them, and do I pass on the knowledge of my black list? You bet I do.

MR HAYSOM: So you have had failure even though you do go word of mouth?

PROF SLOAN: Yes, of course.

MR HAYSOM: Well, that's our point.

PROF SLOAN: Yes, but these people - I mean, it wouldn't matter - this is my point exactly: that these people may have credentials but in fact you need to have more knowledge than that. I have had, on minor points with little consequence, had some bad experiences. People have bad experiences with registered architects, and you know that, Ed, don't you?

MR HAYSOM: Yes.

PROF SLOAN: Okay? The fact that someone is registered is not going to guarantee consumer satisfaction. There are going to be people, registered architects, on people's black lists, and you know it, and the market works quite well.

MR HAYSOM: It's the same with dentists or doctors or anyone, but that's not an argument to say you should take that registration away.

PROF SLOAN: No, no, but I'm saying - no.

MR McDOUGALL: That's the key point.

PROF SLOAN: No, I'm saying that the process is not constrained by the laws of defamation, which is the point you were making. I think that was a silly point.

MR PECK: Do you?

PROF SLOAN: Yes.

MR PECK: Thank you. I don't think it's germane to the issue, but if you want to debate it and waste the time of the inquiry doing that, that's fine.

PROF SLOAN: Well, you brought it up in your submission.

DR BYRON: The point that I wanted to make was that when I attended the last board meeting of the National Institute of Professional Engineers one of the items on their agenda was: who are our competitors as registers or accreditors or certifiers of engineers? They had a quite fascinating run-down on their perspective on who their three or four main competitors were as an accrediting certified body, and then the next agenda item was precisely about culling or maintaining the quality and integrity of the people who were on their register, because, "We have a suspicion that there are some people who really shouldn't be on our list. We think we might have a few bad applies and we are going to move heaven and earth to get rid of them. How can we

get the public, clients and everybody else, to help us find and weed out these bad applies?" They then spent the next two hours discussing that.

MR PECK: So the public is going to determine the standards?

DR BYRON: No, the standards are already set, they're expressed, they're published. The public would be invited to help in the register in maintaining the credibility, the integrity, of its accreditation service by giving feedback. Now, the argument has been put to us that self-regulation couldn't possibly work because the organisation would just sign up anybody who was willing to pay a couple of hundred dollars in fees no matter how good or bad they were. The contrary observation that I made from the Engineers Board and also from the BSAP and Development Industry Accreditation Services is that, like the CPAs and so on, they were extremely energetic in maintaining the quality and the credibility and the integrity of their brand, if I can use that, by very rigorous disciplinary procedures.

MR HAYSOM: Commissioner, you would be aware no doubt of the issue in Queensland regarding the engineers and the foundation disputes. One feedback that I have received from the Building Services Authority is that the Building Services Authority felt that the Institute of Engineers has been quite lax in trying to deal with those issues of those engineers dealing with footings and failures of footings.

DR BYRON: Queensland has a separate register for Queensland. We're talking about the national one or the Queensland one?

MR HAYSOM: No, I'm talking about Queensland. There's the Board of Engineers, but also with the Institute of Engineers, which provides the register which the Board of Engineers works off, there are significant problems which led to the BSA threatening to license engineers who were working in that area because they were getting no satisfaction from the Institute of Engineers register.

DR BYRON: What the head of the Building Services Authority told me was that he didn't really mind who the accrediting agency was as long as they took the responsibility.

MR HAYSOM: That's right, and they weren't taking the responsibility.

DR BYRON: My observation is that the state architects registration boards take no responsibility whatsoever, even less. They have even less accountability for who's on their register than even the BSAP or the - - -

PROF SLOAN: They've got the taxi driver on their register, of course, haven't they? A registered architect/taxi driver is on the register of the architects boards.

MR HAYSOM: What?

DR BYRON: It's a hypothetical.

PROF SLOAN: The point is, it's not a list of competent practitioners - currently competent practitioners.

MR PECK: No, what it claims to be is a register of people who are properly qualified.

DR BYRON: What we were told in Western Australia was no, it's not that either. It's actually a list of people who are eligible to use the title and to have the prestige and status that comes with that title. They chided us for even suggesting that it should be a list of people who are either practitioners or have competency. It was simply a list of people who are eligible to use the titles.

MR PECK: Splitting hairs.

PROF SLOAN: It's certainly not a list of practitioners. You know that, Michael.

DR BYRON: I think there's a significant difference.

MR PECK: No, of course there's not. It's a list of people who are qualified.

PROF SLOAN: Who once upon a time - - -

MR PECK: Who qualified, yes.

PROF SLOAN: Once upon a time. Can I just ask you about overseas students?

MR McDOUGALL: Yes.

PROF SLOAN: You're from the University of Melbourne, is that right?

MR McDOUGALL: No, RMIT.

PROF SLOAN: RMIT. You have quite a few overseas students?

MR McDOUGALL: We have a number, yes. I can't quote statistics, so my advice is anecdotal.

PROF SLOAN: Okay. That's presumably built up over the last decade or so?

MR McDOUGALL: Yes, as well as offering the courses that are provided offshore in Malaysia.

PROF SLOAN: Okay. By and large those students, do they then seek registration in Australia?

MR McDOUGALL: A number of them do, and a number of them hope that they will be able to come and live in Australia and practise as architects through the normal processes.

PROF SLOAN: So they're trying to migrate, in other words.

MR McDOUGALL: A number of them hope that, yes.

PROF SLOAN: Okay, that's a bit different. Do you deal with these students?

MR McDOUGALL: A number, yes.

PROF SLOAN: So they're aware of the registration provisions?

MR McDOUGALL: When they decide that they want to pursue architecture in Australia, they are aware of the systems that allow them to lead to registration, and they are also aware in many instances of the fact that the course is a registered course.

PROF SLOAN: Would you mind if we talked to some of them?

MR McDOUGALL: Contact the university, definitely.

PROF SLOAN: You're not dean of your faculty?

MR McDOUGALL: No.

PROF SLOAN: No, okay. That may be worth doing. Why do these students choose Australia over somewhere else?

MR McDOUGALL: Well, again anecdotally, they believe that the course is a high-profile course. I'm talking about RMIT, which has a high-profile design course. Often their relatives or their parents have trained in Melbourne and then they seek to come and learn in what they perceive to be a high quality course.

PROF SLOAN: It would be useful for us to actually talk to a dozen or so.

MR McDOUGALL: Definitely, and certainly contact Melbourne University as well.

PROF SLOAN: Yes, because it's said to us that if statutory registration were removed then the attractiveness of Australia as a destination for architecture students would diminish.

MR McDOUGALL: I would certainly believe that it's a responsibility of the commission to actually find out the real impact of the deregulation on the courses and the attractiveness of the courses.

PROF SLOAN: But I think it's the accreditation of the courses which - presumably, now we've got the AACA and the international union, your courses would continue to be accredited. That's why I wanted to know. I mean, I'm not sure I'm really interested in those who want to come and live in Australia. That's just another way of coming to Australia, but how important the registration system is.

MR PECK: But to register - - -

PROF SLOAN: But don't forget, Michael, the area that has been the most successful in attracting overseas students in Australia higher education is accounting and there's no statutory registration for it. So it's a hypothesis which needs to be teased out.

MR PECK: But we're comparing apples with pears, aren't we?

PROF SLOAN: No. They're all professions.

MR PECK: I would have thought that if you were studying architecture you're looking at what courses are available in architecture, you're not looking at what the accountants do or whatever.

PROF SLOAN: No, but the proposition that's been put to us is that there won't be any overseas students if we abandon the state architects acts because they're only coming here because it forms part of a training system which leads to registration.

MR PECK: Schools accreditation system, which is an accreditation system under a statutory methodology in Australia which is run jointly - - -

PROF SLOAN: It's only a supposition, that's all, because there are plenty of counter-examples. I mean, course accreditation of course is different from statutory registration of an occupation. All the commerce courses are accredited through a self-regulation system and, dare I say it, they are controlled really by the accounting associations.

MR PECK: But the comparisons must be for a student somewhere in the world wanting to study architecture between the systems that are available in education in architecture, not education in accounting or commerce or whatever.

DR BYRON: Let's take someone who just wants to study architecture, someone from Malaysia, Singapore, Indonesia or the Philippines or somewhere like that who wants to study architecture overseas. What sort of though process would they go through in the sense of - - -

MR PECK: Portability of credentials, quality of credentials, those sorts of things, international recognition.

DR BYRON: How good is the teaching?

PROF SLOAN: How good is the course? What's the course?

MR PECK: It's all tied up with all of those things. It's all - - -

MR McDOUGALL: Quality of the course and portability are major issues.

DR BYRON: Tuition fees are a fraction - - -

MR McDOUGALL: They don't seem to be such an issue. That's comparing - - -

PROF SLOAN: Well, you should charge more if that's true. They're a third of the US fees.

DR BYRON: Where it actually comes down to the nub of it here is that, if the national system for accreditation of faculties of architecture or programs or syllabi or whatever was by our national registration organisation was now a non-governmental or a non-statutory organisation, would they all stop coming? If the courses stayed exactly as they were yesterday, if they were still being inspected and accredited - - -

MR PECK: By whom?

PROF SLOAN: Say the AACA, which doesn't have any statutory role or by ABC Inc.

DR BYRON: Or by some combination including the institute and somebody else.

PROF SLOAN: You already have a role in looking at the courses, don't you?

DR BYRON: We're not talking about other professions, but if there is a national accreditation system and it works and it has exactly the same standards as yesterday and it projects and presents just as well, we're actually being told, "No, people will stay away in droves because the accreditation system doesn't have statutory backing."

MR PECK: The supposition is that the accreditation system has the same standing as currently exists, and you're saying it can be replaced by some system that has that credibility. The trouble is that this system that we've got in place links in to the international scene of schools accreditation. The accreditation system that we have in Australia, for example, is recognised by the Commonwealth Association of Architects accreditation system and therefore if you're a graduate of Madras and you have a qualification from Madras, it's seen as the same as a qualification from Melbourne etcetera. We're working with the UIA to develop a worldwide accreditation system.

PROF SLOAN: You, the RAIA?

MR PECK: Yes, it's in - - -

PROF SLOAN: I thought it was self-regulation.

MR PECK: The International Union of Architects working with the international community of architects.

MR McDOUGALL: But the UIA's structure is also covered by lots of countries which have statutory roles, and it dovetails exactly in that way.

DR BYRON: Are there any in that international system of accreditation that don't have statutory title?

MR PECK: Yes, you've identified them. The only two that you report on are the ones that don't. Of the 58 that we mentioned to you, you picked the two that didn't. I wondered why you didn't analyse the ones that have it.

MR McDOUGALL: And one of those is - - -

DR BYRON: It's a bit hard to get information on Nicaragua these days.

PROF SLOAN: Or El Salvador.

MR PECK: Well, I've given you the Internet site there.

MR HAYSOM: And of those two, the Irish one - we understand from Ireland that that - - -

PROF SLOAN: We've been given Sweden and Norway - - -

MR HAYSOM: - - - legislation has been brought in.

PROF SLOAN: Yes, but we understand that, too.

DR BYRON: My proposition was that all of that that you were talking about could still be done, could still exist if the Australian national accreditation system was non-statutory.

MR HAYSOM: The speculation - you could - - -

DR BYRON: But it's not a prerequisite.

MR HAYSOM: - - - cast a speculation that says, yes, it would be the same, but there's the cost, there's the - cost to the community that is - there's the issue of whether we dovetail with the rest of the world. There are all these other variables that you're just clipping off by saying, "If that one stayed the same and that one stayed the same - - -"

PROF SLOAN: Well, it will, but I mean - - -

MR HAYSOM: You're speculating that it will.

PROF SLOAN: But I think the thing is that the comparisons with the other occupations are fair enough, Michael, because they are professions, they do require training, they do require experience, and they are international occupations, too. So accountancy is an international profession, as is engineering and Australian engineers are recognised overseas, as are Australian accountants.

MR PECK: I agree. Can I just - - -

PROF SLOAN: And they do have strong systems of standard maintenance and transferability and the like.

MR PECK: And they've evolved through the development of western culture in a particular way, and the methodology for the registration of architects and the systems that we have, have evolved over the last 200 years related to the rest of the world.

PROF SLOAN: So we keep it because we've got it. Is that the idea?

MR HAYSOM: No, no, no.

MR PECK: No, it evolved, I said. I didn't say it was made and we kept it. It said "evolved".

PROF SLOAN: But you wouldn't do it again?

MR PECK: Sorry?

PROF SLOAN: If we didn't have it, we wouldn't do it.

MR PECK: And so they'd evolved over that way, and so that is relevant for the legal system is relevant for the legal system. What is relevant for economists is relevant for economists. What is relevant for architects in the world community is relevant for architects.

PROF SLOAN: That of course is problematic in the context of this review when we can go back to - you know, there is a presumption against this sort of thing. That's sort of the trouble. You're saying we should keep it because we've got it, and other people have got it, too, so we therefore should - - -

MR HAYSOM: Commissioner, we're not saying we keep it. We are saying we renovate it, we update it. We agree with you that there are significant problems.

PROF SLOAN: Of course some houses get to the point where it's really better to bulldoze it.

MR PECK: You're certainly trying to make the case, aren't you?

MR HAYSOM: That's a very helpful comment.

MR PECK: Yes, that's exactly where you're wanting to go; we understand that.

PROF SLOAN: Well, we've heard about the paint job. No, no, no.

DR BYRON: We think the structure is still fine.

PROF SLOAN: No, were there other - - -

MR McDOUGALL: If I could just come in briefly - - -

PROF SLOAN: We're here to give you a hard time, you see.

MR McDOUGALL: Not to get a proper result?

PROF SLOAN: When you talk about natural justice, I think I was offended about this, this has been an absolutely open process, and it's all documented. It continues to be, it's transcript, go to our Web site, we are absolutely open book.

MR PECK: Yes, of course.

PROF SLOAN: And there's absolutely no sense in which this inquiry has deviated in any way from the processes we apply to all inquiries, so I don't think you should be impugning us by suggesting that we've denied anybody natural justice.

MR PECK: No-one has been making any suggestions.

PROF SLOAN: I just thought it was a bit strange in your early presentation that you talked about that. Neil, did you have other points?

DR BYRON: All I was going to say on the previous point about the international comparability is that I think you've used the phrase in your submission about international best practice of regulation, and you were talking about the international best practice of regulation amongst architects, but the words "amongst architects" are not there. Now, we have - - -

MR PECK: I thought this inquiry was about architecture.

DR BYRON: But we have a different standard of international best practice and regulation as it relates to the National Competition Policy which is the heading under

which this inquiry is instructed. So the fact that - I mean, we do take full cognisance of the fact that architects in almost a quarter of the countries - 57 out of 212 - have a particular way of regulating, but the fact that we trade with China and China has a command economy has no great implication of how we have to run ours. The fact that we trade with any other country that has a particular set of institutional arrangements doesn't necessarily circumscribe that we have to have the same institutional arrangements.

So we take cognisance of the way that many overseas countries choose to set up their own regulatory systems. That is important, but it is not necessarily dominant because there are other criteria by which to assess a regulatory system.

MR McDOUGALL: I guess there's a key - - -

MR PECK: Can I just respond to that? You mentioned 212. You've researched beyond the 50-odd that we gave you, have you?

DR BYRON: Not all 212, that's for sure, but it's a bit difficult to find information on Uzbekistan and a few of the others, but - - -

MR McDOUGALL: I was only going to make the point that that group - and in particular the groups that are very comparable to our culture and our economic system - of that group, by far and away the majority of them do it in a particular way that's similar to the way we have now. We've given that there's need for refinement. That represents a fair amount of intellectual proposition about how this is the best way to do it, and in fact countries that are comparable with us that don't have it are moving towards a system which is more like what we're proposing. How could it be that the cleverness of Australia is far and away so remarkable that we should actually - - -

PROF SLOAN: You told us about the architects - - -

MR McDOUGALL: - - - see this as a - we would be the cleverest country in the world to move away from this direction and move in the direction of the countries - the Nicaraguan model.

PROF SLOAN: No, Nicaragua has got regulated.

DR BYRON: We have to evaluate the legislation and the non-legislative options according to the competition policy agreements that have been agreed by all Australian governments - state and federal.

MR McDOUGALL: And does that mean that they're too constrained for this particular investigation?

DR BYRON: Well, you would have to be able to make a case for why this particular profession has to be judged by a very different standard from, you know,

the others.

MR McDOUGALL: The rest of the world?

MR PECK: That's a good point because you see this, as Graham Samuel said to the Australian Council of Professions, is the definite exercise in looking at the professions under the national competition policy agreement, and so this has been - - -

PROF SLOAN: I find that hard to believe.

MR PECK: - - - seen as a model, and I don't know whether you're aware of the fact that he said to the Council of Professions that they should read this report, and wherever they see the term "architect", cross it out and put their profession in there.

DR BYRON: Really?

MR PECK: He said that. Graham Samuel is the chairman of the National Competition Policy Council, and that council is the council that determines which of the jurisdictions benefit from the National Competition Policy agreement for hand-out of money.

PROF SLOAN: We understand the process.

MR PECK: It's very interesting that there is this attitude to this whole process. I was wondering - and I suppose, commissioners, you would probably not think it's relevant to your terms of inquiry, the point that we raised in respect to competition for professional services as against competition for contractor's services or goods. This was early in our submission where we looked at the - - -

DR BYRON: We had looked at that.

MR PECK: - - - equation. I don't want to take the time of the hearing up with a response to that if you think it's not relevant to the issue to your terms of reference, but to remind you it was in regard to a comment on the competition policy criteria where we postulated that the formula that this criteria that competition generally will foster production efficiency and thus generate lower prices and better levels of service for consumers could be reduced to an equation which says, "Production efficiency plus lower prices equals better service for consumers," and that is probably not an unreasonable proposition when you look at the supplied goods, but when it comes to the supplied professional services, we're arguing that really the better criteria is knowledge plus applied design research in the case of architects, plus adequate resource equals better service for consumers. If the former criteria is being applied to this, it seems that we're really not going to be serving the public interest.

PROF SLOAN: As I'm sure you realise, economists think in particular ways which is not the same as architects at all. It's obviously an extremely different form of training.

MR McDOUGALL: Certainly.

PROF SLOAN: But I do think we do take that - that to me sounds like an externality and we do take that into account in the spillovers, but I think we will take up that point.

DR BYRON: On the first point, my reaction that I was going to actually comment on was it's not just a question of lower prices. Another form of competition is better quality for the same price, and in yesterday's hearings here and this morning before you arrived and also in Sydney and Brisbane and Perth, we had extensive discussions about the nature of competition, fee bidding, the CSIRO report which I had actually been aware of, you know, even when it was in its draft stage because I was doing a major report on improving the environmental performance of commercial buildings, which is one of my previous reports, the assertions about competition leading to a race to the bottom and exploring other things about whether competition is actually one of the things that drives innovation and being able to demonstrate that, "Even though my fees are higher than Joe Bloggs down the road, I can do a far better job, but good stuff is not cheap, cheap stuff is not good."

There's lots of cliched ways of saying that, and what we've been exploring with a number of people during the hearings is the extent to which their clients are sophisticated enough to understand - again a cliché - you pay peanuts, you get monkeys - and the continued feedback that we've been getting in the hearings is that, no, our clients come to us even though we're more expensive than somebody else down the road because they know that we're good or they know that we can do something that's innovative or leading edge that we're sort of state of the art. I actually reviewed the drafts of parts of that CSIRO report before it came out. So I'm very familiar with it, and I think I mentioned when we first met you about six months ago about that; whether competition is necessarily a race to the bottom or not. I think the evidence on that is at least mixed.

MR HAYSOM: I would have thought, commissioner, that that CSIRO report actually provided the evidence very, very clearly that it was a race to the bottom. It demonstrated with absolutely clarity that the fees have been getting lower and the service standards have been getting lower as a result of that.

DR BYRON: The response, you know, the alternative formulation about knowledge plus applied design research plus adequate resources equals better service for consumers, I mean, that's been reinterpreted to us as a statement that, well, if we had more time and more money we could do better, and that's true. I accept that, but - - -

MR PECK: In the market - for example we have - - -

DR BYRON: They're not giving your more time and more money to do better.

MR PECK: Sorry?

DR BYRON: The market at the moment is not giving you more time, unlimited budgets in order to do more interesting work.

MR PECK: The way the market is operating now, it's not giving adequate time because of information problems, not realising what is required, and therefore accepting an arrangement whereby they believe they are going to get adequate service by the lowest bid given, and that is causing the level of cost to the community that the CSIRO report documents, and in the submissions that we've made to you in response, we have drawn your attention to the system used in the American environment, the Brooks legislation, which is aimed at competition on the basis of knowledge, skill and capability rather than price alone.

PROF SLOAN: I think it is outside the terms of reference though, so it's probably better to - - -

DR BYRON: Well, if I can - please, just one last point.

PROF SLOAN: Sorry.

DR BYRON: The CSIRO report describes the outcomes under the current legislative regime.

PROF SLOAN: Yes.

MR PECK: Yes.

PROF SLOAN: The Architects Act hasn't got anything to do with any of this.

DR BYRON: The Architects has neither helped nor perhaps hindered in terms of that particular outcome. Now - - -

MR McDOUGALL: Except that it may get worse.

MR PECK: A damned sight worse.

PROF SLOAN: It always may get worse; may get better.

MR PECK: Yes, that's what - - -

MR McDOUGALL: That's what we're trying to do.

MR PECK: We're offering you - - -

MR McDOUGALL: We're trying to stop it getting worse.

MR PECK: We're offering the - - -

PROF SLOAN: It may get better anyway.

MR PECK: We will be offering - - -

PROF SLOAN: No, no comments.

MR PECK: We will be offering, in spite of whatever comes out of this inquiry, an option to the jurisdictions to make it better.

PROF SLOAN: Of course. Now, just before I ask you to sum up, I just want to be a very picky person and draw your attention to page 12 of your submission which says - - -

MR PECK: This is the response or the submission?

PROF SLOAN: The response - which talks about the letter from the New Zealand board, and you write there:

This letter suggests that proceeding with the recommendation of the draft report would be likely to end recognition of Australian architects in New Zealand under the TTMRA.

Now, that is wrong, okay, and we've had that all corrected yesterday, so we just need to have that on transcript. Mutual recognition is always about equivalent occupations. There would be no requirement under the TTMRA to register, as it says in the letter, would-be designers, and in fact mutual recognition is likely to proceed under the CER. It's just that that is wrong and so we can put that one aside. Interestingly enough, there are only 54 Australian architects registered in New Zealand, which struck me as an extremely low number.

MR PECK: You have me at a great disadvantage, commissioner, because I didn't hear what happened - - -

PROF SLOAN: Sorry. If you look at the transcript from yesterday, you'll find that John Patience, who is the chairman of the New Zealand Architects Education and Registration Board, has received subsequent advice from his Ministry of Foreign Affairs to actually say that what was in that letter was not right.

MR PECK: Is that so?

DR BYRON: It is completely factually incorrect.

PROF SLOAN: All right?

MR PECK: That's the evidence you have before you. I won't comment on it.

PROF SLOAN: That actually, I don't think, is speculative. Those are actually the facts on that matter.

DR BYRON: I could give you a copy of the New Zealand version of the Trans-Tasman Mutual Recognition Act and under section 31 you and anybody else who reads it would immediately know that that statement is factually incorrect.

PROF SLOAN: I'm not saying it's an important part of your submission. Did you want to sum up, Michael, or Ed too? Did you want to say something?

MR PECK: Commissioner, the summing up that we would make is this: basically what we've said in our statement today, but primarily that we are of the view that what we have seen to date doesn't demonstrate that the current arrangements are anticompetitive. That's the first point we would make.

The second point that we would make is that Australia needs for the benefit of its own community and for its standing in the world community a statutory system of regulation of architects. We believe that we have market failure at the moment due to information problems and that that problem will be severely exacerbated by a deregulated environment, and therefore we believe this commission would be discharging its duties and responsibilities by recommencing to the jurisdictions that the current system should be significantly reformed to enable the introduction of a national statutory system of registration and regulation of architects.

PROF SLOAN: Thanks very much, Michael. Did you want to say something more, Ed?

MR HAYSOM: Only to reiterate what Michael has said. What we have said today is that we're not defending the current eight separate acts around the country. We've advocated in our paper a co-regulatory approach with a national register. We have advocated that there is retention of the protection of the word "architect" to prevent consumer misunderstanding. We also believe that there should be, as is currently in place in many of the jurisdictions, regulation on the practice of architect, as is the practice in building. Apart from that I don't have any more. I don't know whether - - -

MR McDOUGALL: I think just to reiterate that to ignore the fact that internationally the communities believe that they can get the best consumer protection and quality out of their architectural cultures is to use a system of regulation that we're proposing. Merely because the constraints of the inquiry say that you can't consider that I think is not really headed in the direction of what is really the best system.

PROF SLOAN: Thanks very much gentlemen, and thank you, Michael, for your ongoing involvement and the resources you've put in, in your submissions, and your

courteous interaction. Thank you very much.

MR PECK: Thank you.

PROF SLOAN: We'll call a halt for lunch and then, Robert, you're right for 2.30?
Thanks.

(Luncheon adjournment)

PROF SLOAN: Now we will recommence the public hearings on the review of legislation regulating the architectural profession held on Thursday 22 June 2000 in Melbourne. Robert, can you introduce yourself and the affiliation under which you're speaking at the moment.

MR KNOTT: I'm representing the Building Dispute Practitioners Society, which is a Victorian-based organisation. We do have other members in other states but the bulk of our membership is in Victoria. Our membership comprises some 450 to 500 members and the composition of the membership is largely legal practitioners, ranging from articulated clerks to judges. The committee - - -

PROF SLOAN: So are the members individuals as opposed to firms?

MR KNOTT: The members are individuals. Firms pay individuals' memberships. In addition to the legal fraternity members there are people like myself who are graded arbitrators or trained mediators and are drawn from various parts of the building and construction industry. We have quantity surveyors, engineers, builders, a plumber, and the numbers and proportion are about 25 to 30 per cent non-lawyers.

The committee, which has prepared this submission without consulting the membership because of the constraints of time and the periodic meetings of the committee, very much reflects in its composition the composition of the membership except there are no articulated clerks on the executive committee and no judges. We do have a QC and the rest of the members are adequately represented. We considered in our committee meetings and all committee members were provided with the information and a copy of your draft report, and the response submission that was sent in to you was, as you will probably note, very narrow, particularly in view of the wide spectrum of the membership, largely because of what I mentioned earlier, our inability to canvass the membership at large on the issues which we wish to address, and to a degree due to lack of agreement between the members of the committee on other matters that were canvassed at length. So the submission is based, as I say, on the committee's considerations and it's narrow for the reasons that I've described and does in fact represent a consensus of all of the people there on the matters that are addressed in the submission.

PROF SLOAN: Well done, yes.

MR KNOTT: It's quite an achievement, I can tell you. What, unfortunately, is not made clear in the submission is that we do realise that it's a national inquiry and we did consider it on a national basis, but we felt that in order to make our point and to make it clear we would refer to Victorian legislation, both for that reason and for the reason that it's the one with which we are most familiar. The recommendations that we're making are based on a national concept, and we believe that what we've said about the Victorian legislation will be equally applicable to the legislation in other states in a greater or lesser degree.

Having sat through, as you know, the hearings for yesterday and today so far, I

won't address the submission in detail. To save time, I'll speak to it in respect of some of the things that have been raised in the past few days.

PROF SLOAN: That would be great, Robert.

MR KNOTT: The first point that we make is improving the training and disciplinary procedures of architects to ensure the maintenance of professional standards. Again, we're addressing architects as a separate group here. We're not considering people who are non-architects; we're talking about architects, and we do believe that any outcome of this review which improves the training and disciplinary procedures or architects and ensures the maintenance of their professional standards will be for the benefit of the community and the benefit of the country.

The issues of a national approach to legislation - we're very conscious, particularly in view of the large number of lawyers - that it's going to be very difficult to have national legislation, and the alternative that we are favouring is the model act approach similar to, for instance, the arbitration act, whereby there's a model act for all states and territories which can if necessary be tailored to suit. For instance, in the example that we've given in Victoria we've detailed the relationship of the provisions of the Architects Act and the operation of it to its interaction with the provisions of the domestic building contracts act, the Building Act and the Building Regulations and with the activities of the Building Practitioners Board.

PROF SLOAN: So there you're talking about a national system for the regulation of architects or about the dispute issue?

MR KNOTT: We consider that both are interrelated. We don't believe that regulation of the architectural profession from the point of view of training and experience is going to serve the community adequately unless there is an appropriate and effective dispute resolution procedure. I mean, we are a bunch of dispute resolution practitioners, obviously. From this point of view we're not advancing an advertisement for our services but we're drawing on our experience in this particular field, and I'm sure if - - -

PROF SLOAN: But when you're talking about the model act, this is an important issue to us. I mean, how do you go about getting a national system and a harmonised legislation across the - - -

MR KNOTT: Exactly, yes. In a similar way to the way the Commercial Arbitration Act operates, and the act would include provision for professional conduct regulations and for dispute resolution procedures. We go on to comment that not only registration is important in our opinion but we believe that compulsory professional indemnity insurance is important, and we believe that any improvement on the present system, particularly on a national basis with model acts, should include provision for compulsory insurance in connection with registration. We didn't actually go into the detail of annual renewal of registration, but I believe I can speak on behalf of the committee that had we gone into it we would have advocated that

rather than the

opposite, because if we are advocating effective registration of compulsory insurance we all would appreciate that it can't be effective unless it's subject to annual renewal.

The reference to the other practitioners who are covered in the Building Act refers of course to those who are carrying out domestic building work, and there is currently in Victoria no requirement for architects to have professional indemnity insurance unless they're carrying out residential domestic work in order to comply with the requirements of the Domestic Building Contracts Act. We believe that they should be required to have professional indemnity insurance per se.

PROF SLOAN: That's a big of a gap, isn't it, at the moment?

MR KNOTT: We believe that it's certainly an undesirable feature. The next thing that we've addressed may go beyond the terms of reference of your inquiry.

PROF SLOAN: That's okay. No-one else has taken any notice.

MR KNOTT: Well, we have taken notice of it and we've deliberately put it in because we believe that it should be part of your terms of reference. In the model act we believe that there should be embodied the concept of proportionate liability to replace joint and several liability for claims in defects and disputes. If it's going to address dispute resolution procedures, we're going so far as to say that we believe that should be a feature, not the main feature but incorporated within the structure for dispute resolution, for building disputes in both commercial and domestic matters. We go on to say that:

One of the reasons advanced prior to the introduction of this concept in Victorian legislation was to give the building industry the ability to spread its losses arising from building defects amongst those who are jointly responsible in distinct proportions or shares, including architects.

It would probably unnecessarily take up the time of the commission to go into an excursion on this, but what we're talking about is the tendency to sue someone with a deep pocket, and if people are found to be jointly liable and a couple of the parties go bankrupt, maybe the architect who has been joined and is found 10 per cent liable by the court finishes up with his professional indemnity insurance carrying the whole can because the other parties have gone bankrupt. That's an extreme case, but that's one of the reasons why we're going for proportionate - - -

PROF SLOAN: I suppose so, yes, but I suppose I have a problem in one sense with the idea of proportionate liability and all of the discussion we've had with so many architects to say, "Well, they're the ones responsible." You heard the conversation this morning about subcontract - - -

MR KNOTT: I'm not arguing with - - -

PROF SLOAN: But it didn't matter that they were contracting out to other people

because they were responsible.

MR KNOTT: Commissioner, you're misunderstanding me. I'm talking about a court finding. If the court finds in a judgment - I know what you're saying but I'm talking about - - -

PROF SLOAN: I'm just thinking philosophically. I'm told that architects are the top of the pyramid.

MR KNOTT: I know philosophically what you're saying, but I'm talking about a court judgment. If a court judgment is handed down, if you're a judge of the Supreme Court and you hand down a judgment and you say that there are three parties in this who are liable, there's the architect, the engineer and the builder, and the proportionate liability of the parties is 10 per cent the architect, 40 per cent the builder and 40 per cent the engineer and the builder and the engineer go bankrupt, my professional indemnity insurance picks up the whole can under the rules of common law unless there is some provision. This is why this provision has been brought in, we say - - -

PROF SLOAN: I hear what you say, but do you hear what I say too?

MR KNOTT: I hear what you say, but what you say is not relevant to a judgment in court.

PROF SLOAN: Okay, but the architects in a sense are saying, "We don't want to be one of these other building services providers. We don't want to go in the Building Act because we're at the top of the pyramid." It seems to me if you're at the top of the pyramid you do carry the can.

MR KNOTT: I'm not speaking as an architect in this capacity. As I say, I'm speaking on behalf of the building practitioners - - -

PROF SLOAN: I don't know whether you can have it both ways.

MR KNOTT: The building practitioners are lawyers and, in the same way that economists see things differently from architects, lawyers see things differently from both economists and architects, and this is why I consider myself to be at a slight disadvantage making this presentation.

PROF SLOAN: Not at all. I just - you can sort of see my point.

MR KNOTT: But I'm advancing the legal point of view, and I think, with respect, you have to accept that.

PROF SLOAN: No, I do.

MR KNOTT: Because, even if I were a judge, I would say the same thing.

PROF SLOAN: No, that seems like a sensible outcome to me, what you're proposing.

MR KNOTT: And a judgment in court is a judgment in court, whether you or I like it or not.

PROF SLOAN: Yes, sure.

MR KNOTT: We then go on to say:

This is a further reason to ensure that any legislative changes introduced nationally must be combined with the maintenance of requirements to keep some form of registration and insurance (as well as appropriate education standards or requirements) similar to other building practitioners referred to in the Building Regulations.

So they're drawing that as a parallel to emphasise, I believe, the annual renewal aspect of it. So, in summary, we're saying that the essence of the Building Dispute Practitioners Society submission is any proposed changes will need to take into account the current Victorian legislative system - which has been outlined here - and by corollary you interpret that to mean similar legislative systems in other states and territories, which is, as Mr Keating used to say, a big ask. A model act that's tailored to suit all of those is going to be very difficult, but we believe that, unless that's achieved, we're not going to advance much further than we are now.

We go on to say that we believe that currently architects should be separately covered through an Architects Act and regulated through registration and insurance, in other words, an improved Architects Act rather than throw out the Architects Act, not because the building dispute practitioners are in any way supportive of architects or wishing to promote the architecture professional, but because they believe that it's not going to be practically possible legally to do it any other way, given the complex structure and interrelationship of the various acts and legislation in all of the states and territories.

PROF SLOAN: But hang on. You've got your engineers, for example, in there, and these groups don't have separate acts.

MR KNOTT: No, but - - -

PROF SLOAN: So isn't this actually your very strong case for putting the architects into the Building Act through the building practitioners list?

MR KNOTT: No, we're not saying put them into the Building Act; we're saying that there should be similar provisions in the Architects Act, there should be uniformity. But what we're saying is that because the existing system is a complex one and the Architects Act is embedded in a complex mesh of legislation in all of the

states and territories, it's not going to be cost-effective or for the benefit of the community at large to destroy that structure. Let's make it work and have uniformity so that architects are treated in the same way as other building practitioners, that they're treated in that same way through their existing act so that we don't have to - - -

PROF SLOAN: I don't think that last bit follows at all.

MR KNOTT: So that the state and territory governments don't have to repeal and change so many acts, because it's going to be difficult enough to persuade the state and territory governments to do anything, and the more complicated we make it for them, the more difficult it is to get over that hurdle. So we're suggesting if this is going to be achieved, it will be more surely achieved and more effectively achieved by a model act and by bringing all of the Architects Acts up to a model standard and a common degree of responsibility and effectiveness of registration and accountability by professional indemnity insurance to make it work. That's our submission.

PROF SLOAN: Thanks very much. That's absolutely great.

DR BYRON: You were here yesterday when we were talking to the Architects Accreditation.

MR KNOTT: I was.

DR BYRON: I could imagine that a national system could occur tomorrow if it was self-regulatory in the sense that AACA was to become AACA Pty Ltd, for example, and said, "We offer a highly respected, authoritative accreditation service for people who we consider highly competent, skilled practising architects and they all have professional indemnity insurance and a commitment to continue with professional development," but with no statutory backing at all, purely as a self-regulatory system, and the existing building control legislation in Victoria and Queensland and the foreshadowed one in Tasmania could then say, "People whose names are inscribed on this national register are accepted for registration onto our state system - - -"

MR KNOTT: Our state's Architects Act.

DR BYRON: No, we - - -

MR KNOTT: This is what we're suggesting, that you leave the architects there and have this body, if you like, as a qualification body. If you take the Architects Act out, we're regarding this as taking out a link in a mesh of interlinking legislation, and if you take out one link you have to readjust the whole legislation. To make your postulation work, according to the submission of the Building Dispute Practitioners Society, that registration body or whatever, the qualification body, would provide the names of the persons that are in the state model act registers and they would be dealt with within the state within the improved structure, using the existing act and the way it fits in with all of the other interrelated legislation.

PROF SLOAN: I hear what you say, but in fact I don't think it is a very strong case for a separate Architects Act. It's in fact a stronger case to put the architects into the Building Act, because you're dealing with this with the engineers, the surveyors, the builders, the draftsman. They're all there. Why not tidy it up and put the architects there too, and then you'll have the same kind of standards, competency and - see, as you know, Robert, there is no requirement to have insurance to be a registered architect.

MR KNOTT: I know that, and we're saying there should be.

PROF SLOAN: Whereas if you go in under the Building Act that will be, you know - - -

MR KNOTT: It will only require them to be registered for domestic work. That's all the Building Act requires.

PROF SLOAN: Yes, but they'll have to have insurance.

MR KNOTT: We don't believe that's adequate. We believe they should have professional indemnity insurance for all work.

PROF SLOAN: Okay, well, that would be something that you might plump for, for that particular group. I absolutely hear what you say. It seems very sensible. Because in a sense you're - are you telling me that you're trying to work towards sort of non-litigious means of settling building disputes?

MR KNOTT: Yes.

PROF SLOAN: On a kind of let's - sensible person basis?

MR KNOTT: Well, it depends on what is built into the model act. This depends on the content of the model act.

PROF SLOAN: But you feel that for that system to work there needs to be a subsidiary system which kind of underpins the competence and insurance status and the like of the professionals providing the service which then might generate a dispute?

MR KNOTT: Yes.

PROF SLOAN: So that's not in dispute. Is that what we say?

MR KNOTT: You and I are not in dispute over that, yes. But I have to go back to one point. You've missed my point when I talked about the interdependent mesh of legislation. You refer to the engineers and you refer to the building practitioners and

all of these people. They all have their place in the mesh now, as we do.

PROF SLOAN: Yes, that's my point.

MR KNOTT: As we do, as architects do.

PROF SLOAN: But I'm putting them in the mesh with everyone else.

MR KNOTT: No, this is the point. The interdependent legal structure is there now, and if you take out one link you then have to make compensatory adjustments, because if - - -

PROF SLOAN: No, because I'm putting them in the Building Act.

MR KNOTT: Yes, but that is in fact causing the compensatory adjustments to be made.

PROF SLOAN: But it might be a plus.

MR KNOTT: Because they're a different link in the mesh. They can stay in their link in the mesh. The Architects Act can stay in its link in the mesh and, provided they have common standards of registration and professional indemnity insurance, the functions are right and you don't have to reinvent the whole legal structure, which we believe is going to be a very big hurdle to get over in selling it to the various state and territory governments.

PROF SLOAN: It's there, therefore keep it.

MR KNOTT: This is our opinion. You may disagree with us, but this is our submission.

PROF SLOAN: It looks very untidy actually at the moment. It looks like it seriously needs to be tidied up.

MR KNOTT: We believe and, as I say, we believe that uniform legislation is - - -

PROF SLOAN: But, I mean, for them to be treated with other building service providers. But I take your point, and I think the interesting issue is the wording of some of these other acts which we've come across in some other areas where the term "architect" is used, and of course the term "architect" is used with legal meaning.

MR KNOTT: Exactly. For that reasoning the Building Dispute Practitioners Society recommend that it be maintained, because of its legal meaning, and it appears in a lot of other places other than architects registration acts. Wherever it appears, it has a legal meaning, and we believe that that legal meaning should be retained; otherwise again so many other acts are going to have to be adjusted and changed.

PROF SLOAN: The duty of care applies to architects as it does to non-architects. This is not a purist argument at all. This is about how you might pragmatically deal with disputes that arise.

MR KNOTT: Yes. We in the Dispute Practitioners Society are looking at it purely from the point of view of the public interest in having a better system than we have now for identifying the services of the service providers, raising the standard of the service providers, particularly in having renewable registration, and ensuring that all of them have professional indemnity insurance. As I say, the legal boys are of the opinion that there's no reason - if we didn't have an Architects Act and we didn't have a building practitioners set-up, it might be quite a good idea to put them both in together but, since we have both of them, why change it? We can't see that it's going to achieve anything other than putting an awful lot of money into a lot of legal offices' pockets in advising all the state and territory governments on the alterations that they're going to have to make to their acts. It's not going to improve the protection that's going to be offered to the public.

PROF SLOAN: No, I don't know whether that's a very strong argument.

MR KNOTT: We're not arguing, we're stating an opinion, commissioner.

PROF SLOAN: That's for saying, "It's there, therefore keep it."

MR KNOTT: The BDPS submission is not an argument. We're stating our opinion. We were invited by the commission to make a response and there was a lot of discussion in the committee as to whether we should make a response at all. We did agree that, because we had been specifically invited to make a response, we would do so, and I've been also authorised to express the opinion that we would be very happy to comment on draft legislation if and when the stage arises at some time in the future.

DR BYRON: One of the reasons that I'm particularly pleased to have your submission is because the perspective that you just described is very, very similar to the perspective that is prescribed for the commission in everything we do, including this inquiry, in terms of trying to work out what is in the public interest, and we're looking for a system that minimises disputes arising and facilitates their resolution and provides a maximum amount of quality information to inform consumers and so on. So there's quite a remarkable convergence of interest in what both you and we are trying to achieve here, and that makes it particularly helpful since you also don't have a particular axe to grind in this debate.

MR KNOTT: The society doesn't. I'm their spokesman.

DR BYRON: The society, sorry. That was a "you" plural.

MR KNOTT: Thank you.

DR BYRON: The one difficulty I do see, though, is the fact that we've been asked to conduct this inquiry under the National Competition Policy and, as Judith has said, for all the National Competition Policy reviews, if it is concluded that the existing legislation has anticompetitive or restrictive elements then the default is that such legislation should be repealed unless we can make a public interest case for its retention. So I guess one sort of public interest case for its retention that you seem to be putting is - let's say the anticompetitive aspects are relatively small: the public interest case, for its retention, relies on - it would be difficult, complicated and tedious to go through the legislative amendments and find where the word "architect" appears in all other bits of legislation, and then deciding do we mean architect in the narrow legal sense or do we mean architect in the 1920s sense of everybody who designs and procures buildings and then have to adjudicate and adjust? As we found out in South Australia, you have to adjust the licensing act, or you might want to adjust the licensing act.

I think that's an interesting practical argument. We will have to assess how much the relative public benefit of avoiding the administrative tedium - I shouldn't say that - or the work that needs to be done in making all the necessary amendments - - -

MR KNOTT: Our submission is as much to draw to your attention matters which we believe that you should address as it is to propose the manner in which you should address them. In fact, we've avoided for instance suggesting even an outline for a model act. If we were asked to do so, I'm sure we have the expertise to do so or perhaps to comment on a model that's proposed. But, again, that's further down the line. We're talking about basic principles here and looking towards the common good.

PROF SLOAN: You see, there is this additional legal loop that you might think about, and it goes back to - the thing is, the architects boards aren't actually providing a list of competent practitioners, all right. They're not.

MR KNOTT: We haven't addressed that.

PROF SLOAN: No, but this is a hypothetical for you. That's an issue, I would have thought, for you.

MR KNOTT: Would you mind, commissioner, not asking me things like that, because I'm speaking on behalf of the society, and this is - - -

PROF SLOAN: Can I ask you when you come back?

MR KNOTT: Exactly. This is why I separated my personal submission from that of the society.

PROF SLOAN: And you're not from Tasmania either.

MR KNOTT: Well, my wife is, and it runs well. I'm happy to answer those questions in my personal capacity, but in representing the society I can only speak within my brief.

PROF SLOAN: Okay.

DR BYRON: Certainly.

PROF SLOAN: But you are of course, without fleshing this out, arguing for quite strongly reformed Architects Acts, aren't you?

MR KNOTT: The society is of the opinion that the model act should be an improvement on the Victorian act, and we have practitioners who practice collectively in all states of the Commonwealth. The consensus opinion is that the Victorian act is the best of a bad lot.

PROF SLOAN: Yes, and it probably does need at the end of the day to be capable of being described as a list of insured competent practitioners, would you say?

MR KNOTT: The product of the act is, but the act itself doesn't comprise that. The act enables that list to come into being, and what we're talking about - - -

PROF SLOAN: It doesn't really at the moment, does it?

MR KNOTT: Well, it does.

PROF SLOAN: Not the insurance bit, definitely.

MR KNOTT: The insurance bit it doesn't. We're suggesting other features that the act should require and we're proposing that (a) the Victorian act should be overhauled and that there should be a model act that in turn has a knock-on effect and overhauls all acts, which again would give a national framework for both administration of the Architects Act and dispute resolution, because I've been involved in dispute resolution, as you'll find out later on this afternoon, in New South Wales, South Australia and Queensland. When one goes to different states, as you know, there are different rules governing the performance of Australian architects and what's acceptable in one state is not acceptable in another at law. This is a ridiculous situation, and the Building Dispute Practitioners Society believe that their proposal to you as to things that you should look at in your report will go towards remedying that situation.

PROF SLOAN: Okay, Robert. You can come back as Robert Knott, architect.

DR BYRON: And I'll ask you other questions then.

PROF SLOAN: Thank you very much.

PROF SLOAN: Have we got David White here? If you could state your name and your affiliation for the purpose of transcript.

MR WHITE: My name is David White. I'm here appearing in my capacity of the deputy director of Bruno Taut Institute. For the information of the hearing, the Bruno Taut Institute was inspired by the Brunswick Institute, which is a weatherboard think tank funded by his wife, of which Shane Maloney claims to be the deputy director and the example of Bruno Taut, and I've created the Bruno Taut institute, a not-for-profit establishment for architectural research and speculation funded by my wife and it functions as a vehicle for my extraprofessional activities. Before I go on, just for the record I'd like to state that none of the - - -

PROF SLOAN: Have you said who you are?

MR WHITE: I have, yes. I think I did. Yes, I think I said I was David White.

PROF SLOAN: I think you might - well, just repeat it.

MR WHITE: I'm David White and I'm appearing as the deputy director of the Bruno Taut Institute.

PROF SLOAN: So is your wife a director?

MR WHITE: That's a moot point.

PROF SLOAN: Or you don't have a director, you just have a deputy?

MR WHITE: She provides the funds. It's a moot point. There's not a formal position of director.

PROF SLOAN: So you're not the Bruno Taut Institute Inc?

MR WHITE: No, it's an entirely sort of freestanding, independent, totally unregulated body. It's the market in its finest form.

PROF SLOAN: Okay. We've enjoyed your submission.

MR WHITE: Yes, I think it's very difficult trying to really discuss anything with economists because their point of view is really so unique, and I may also be fairly unique amongst architects in actually having a book on economics in the library.

PROF SLOAN: Good. I bet it's a bit out of date.

MR WHITE: It's very out of date because it's essentially Keynesian, you know, absolute nonsense.

PROF SLOAN: An oldie but a goodie.

MR WHITE: It refers in the introduction - I'll just quote a little bit of it. It says:

In the 1972 edition of the Economic Journal, the official organ of the Royal Economic Society -

which is very out of date - perhaps great strides have been made since these articles were written -

two articles of eminent economists were devoted to criticising the present state of economics and its lack of recent progress. Prof Phelps-Brown of London University entitled his presidential address to the society the Underdevelopment of Economics and took as his starting point the smallness of the contribution that the most conspicuous development of economics in the last quarter of a century have made are the most pressing problems of our time. G.D.N. Werswick, director of the National Institute of Economics and Social Research asking, "Is progress in economic science possible?" also expressed his uneasiness. "Standards are high, the intellectual battalions are powerful but notwithstanding the appearance of formidable progress in techniques of all kinds, the performance of economics seems curiously disappointing, the moment one puts a few test questions." The first of Mr Werswick's test questions was simply, "What are the causes of inflation in the United Kingdom at the present time."

So essentially we're dealing with a very difficult concept. I've done a little reading, it seems to begin with Adam Smith and he seemed to believe in an invisible hand that guided the market and it moved on and in the 19th century Adam Smith was a classical economist, there were the neoclassical economists in the mid-19th century - Ricardo was one of those - and they refined things a little bit because people were a little more sophisticated in the 19th century. There's Marxist economists, there's Keynesian economics which was nonsense. Keynes basically believed that in the long run we'd all be dead and Keynes died and perhaps we're cleaning up the results of Keynesian economics.

So I thought arguing from analogy might be a good way to go because basically when people don't understand what each other is talking about, if they can find an analogy which they both can understand, you can move towards some agreement. That's why I'd like to begin my presentation with a short reading from Douglas Adams, The Hitchhiker's Guide to the Galaxy.

PROF SLOAN: I might say I don't actually go around talking about architecture so it's strange that people would want to go around talking about economics.

MR WHITE: But I mean you do because you're sitting on a review which is reviewing acts which control architecture.

PROF SLOAN: Architects. But that's very little to do with architecture.

MR WHITE: Well, architects, yes. I'm only talking about economists really.

PROF SLOAN: Okay, let's have the quote.

MR WHITE: So:

The ships hung in the sky in much the same way that bricks don't:

This is Prostetnic Vogon Jeltz of the Galactic Hyperspace Planning Council. ...

As you will no doubt be aware, the plans for development of the outlying regions of the galaxy require the building of a hyperspatial express route through your star system, and regrettably your planet is one of those scheduled for demolition. The process will take slightly less than two of your earth minutes. Thank you.'

'There's no reason in acting all surprised about it. All the planning charts and demolition orders have been on display in your planning department on Alpha Centauri for 50 of your earth years, so you've had plenty of time to lodge a formal complaint and it's far too late to start making a fuss about it now.'

Now, moving on - - -

PROF SLOAN: Is this the downward seriousness theme?

MR WHITE: Pardon? Look, many true words have been spoken in jest.

PROF SLOAN: Okay, all right.

MR WHITE:

It can also be said that public notices warning of the impending demolition of the architectural profession have been appearing in newspapers around Australia for almost 30 years.

PROF SLOAN: Well, you've got 20 more to go then.

MR WHITE: Yes. Well, I think given the speed the process has moved with, that's probably about right.

The Trade Practices Act 1974 introduced by the crusading quixotic Whitlam ALP government was intended to regulate the conduct of business in Australia, among other things prohibiting certain trade practices regarded as restricting competition or being unfair or unconscionable. An early casualty of this act was the RAI minimum fee scale.

If I might digress back to my attempt at interjection earlier, that you mention that the Architects Act hasn't been effective in preventing the erosion of the quality of the provision of architectural services caused by competition and the removal of the minimum fee scale effectively permitted fees to be driven below a level where it has been sort of found in practice that architectural services couldn't be delivered properly. That's just a digression. Now, in the tidy minds of Trade Practices Commission bureaucrats Architects Acts were consumer protection legislation which was outside their jurisdiction, an annoying anomaly hanging over from simpler times. Throughout the 1980s there was an increasing push by government for micro-economic reform to make Australia more competitive in the developing global marketplace. A key target was any legislation regarded as unnecessary or restricting competition.

The 1989 Special Premiers Conference established the Building Regulation Review Taskforce following the publication of a number of reports critical of the legislation regulating the construction of buildings in Australia. In February 1990 the Victorian regulation review unit released the draft report of its inquiry into building and construction industry regulations in Victoria.

PROF SLOAN: You don't want to just skip over this history because it's very interesting, but you've got some better bits at the end, you know, and you've only got quarter of an hour.

MR WHITE: Didn't I start late? Look, I'll read faster.

PROF SLOAN: No, no. That would make it worse. Why don't you just paraphrase it.

DR BYRON: David, it's all on the Web site already and reading it into the transcript is simply duplicating.

MR WHITE: Okay, it's essentially on the Web site.

PROF SLOAN: And let's face it, you've got better jokes at the end. You know that. Maybe if you start at the top of page 3.

MR WHITE: Page 3, yes. Essentially I went through a lot of stuff and we got to the state and territory round of NCP reviews and the Victorian review undertaken by Freehill Hollingdale and Page was by far the most professional of the state and territory reviews completed and I had the misfortune to read them all. In my view perhaps the name of the man in charge of the Northern Territory review summed up the quality of most of them.

PROF SLOAN: I'm surprised you've read all of them because most of them are not public documents.

MR WHITE: I have. I obtained them.

PROF SLOAN: Through legal means?

MR WHITE: Yes, entirely legal, yes.

PROF SLOAN: Doing better than us.

MR WHITE: I've provided sufficient documentation to I think sort of reassure you that I did do that.

DR BYRON: Could you lend us copies?

MR WHITE: I could actually if you want to come home. We can rout through the offices of the Bruno Taut Institute and get them out, yes.

PROF SLOAN: It's a bit messy there, is it?

MR WHITE: Very messy, yes.

PROF SLOAN: We might have to send someone out to your house.

MR WHITE: Chaos. Now, my difficulty with the Victorian review - it was very good and its findings form part of the matters which are to be considered by this review, but it has never been made a public document which makes the position of, say, well, the public and the profession rather difficult so I think really in the interests of the transparency of this review I should take the opportunity at least to read the executive summary into the public record. We have the Freehill Hollingdale and Page NCP review of architects and building legislation for Victoria, final report February 1999.

Freehills regulatory group was appointed by the Department of Infrastructure to undertake the national competition policy review of the Architects Act 1991. The Architects Regulations 1993, the Building Act 1993 and the Building Regulations 1994. We find that several provisions in the above legislation operate as restrictions on competition. Some of these provisions warrant amendments. In many other instances however we hold that the provisions may raise costs to business but nevertheless provide net benefits to the community. In respect of the architects legislation, a primary consideration is whether the title restrictions and registration provisions achieve net benefits for the community. We hold that they do and, subject to our findings on the potential benefits of integration with the building legislation, we could not find an alternative mechanism which would clearly achieve higher net benefits.

Review of the building legislation gave rise to several issues. We find that where the registration level for a building practitioner category or class is high, the title restrictions, registration requirements and compulsory insurance

requirements are likely to provide net benefits. However, for categories where registration levels are low it is not clear that the provisions provide net benefits. Given the relatively recent reform of the legislation, we take the view that it is premature to repeal the provisions. It appears that insufficient time has elapsed to ensure adequate levels of compliance with the title constraints and registration requirements.

Instead, we recommend that the provisions be amended with a view to clarifying their meaning and to increasing the levels of registration. For instance, in our view partnerships and companies should be required to obtain registration. Further, we recommend that review of registration levels should be undertaken at regular intervals to assess whether it is appropriate to retain registration requirements for any or all categories. Increased audits of building surveyors should enhance the benefits of the building permit system. We did not assess the individual compulsory insurance orders issued by the minister. However, it is our view that the minister's power to issue and revoke compulsory insurance orders provides net benefits and should be retained.

Further issues arise in relation to the building legislation's administration. Though we do not find that the building permit levy, the registrations fees or other charges amount to restrictions on competition per se, it is our opinion that the provisions governing the funding of the legislation's administration should be framed to offer greater efficiency incentives and to provide greater transparency. In this regard we make some recommendations about the building administrative fund, a building permit levy formula and about separate disclosures of the revenues and expenses of the BCC, BPB, BAC and the BRAC.

We recommend that consideration be given to undertaking further review of the structure, function and performance of the regulatory bodies to procure greater benefits from the administration of the legislation. The terms of reference require consideration of the case for integrating the architects legislation with the building legislation. We adopt the view that there are potential benefits to be derived from such integration such as administrative costs savings, streamlined legislation and the common application of construction industry policy to all relevant occupational groups. The experience and effectiveness of the ARBV suggest that amalgamation of the ARBV and the BPB could facilitate improved regulation of the building legislation. As the building legislation is still somewhat in its infancy, we are of the view that if integration were to proceed a appropriate transition period would further enhance the available benefits. We summarise our broader findings in the following tables -

and I'll paraphrase these a little.

Chapter 4(4): constraints on use of the title Architect to registered architect - sections 4, 5 and 6. Subject to our discussions on integration of the architects and building legislation, we recommend retaining title Restriction and

Restriction Requirements for Architects.

Chapter 4(5): control on the ownership of organisations using the title Architect and its derivatives - sections 13 and 14. We recommend that the ownership provisions be amended to ensure that in firms using the title Architect will hold themselves out as offering architectural services at least one director or partner is a qualified practising architect.

Chapter 4(6): constraints on acting as a developer and an architect on the same project - regulation 8; on using the title Architect when carrying on the business of developer - regulation 9; and on advertising as an architect when acting for a developer - regulation 12. We recommend regulations 8, 9 and 12 should be repealed and regulation 10 should be amended to require an architect acting as both developer and architect to give the client notice in writing of the scope of his or her different roles. Apart from regulations 5, 6, 7 and 10, generic laws governing misleading and deceptive conduct may also be relied upon. This will achieve a higher net benefit than the existing provision.

Chapter 4(7): prohibition on architects endorsing for profit a specific building material component service or product - regulation 13. In our view, regulation 13 imposes costs without achieving benefits over and above those achieved by regulations 5, 6, 7, 10, and 14. We recommend the repeal of regulation 13 and reliance on regulations 5, 6, 7, 10 and 14 to achieve higher net benefits.

Chapter 4(8): constraints on accepting financial advantages from suppliers, contractors and tradespeople of the project except as a client - regulation 15. We recommend that regulation 15 be repealed and regulation 5, 6, 7, 10 and 14 be relied on. This offers a higher net benefit as it achieves similar benefits using less interventionist and hence less costly prescriptions.

Chapter 4(9): exemptions for public sector-employed architects. Our recommendation is to repeal these exemption provisions to ensure that all architects, including private and public sector employees, are treated equally by the provisions.

Chapter 4(10): constraints on seeking business from clients of other architects - regulation 19. Our recommendation is to repeal this provision because contract law provides adequate redress for an architect in the event of breach by a client.

Chapter 4(11): other provisions. For various reasons we do not recommend amendments to these provisions.

I'll spare you the recommendation in response to the building legislation.

PROF SLOAN: It's getting pretty serious.

MR WHITE: I'll just say the recommendation with regard to:

Chapter 7: integration of the architects legislation and the building legislation. We find that there are potential net benefits to be obtained from integration of the architect legislation and the building legislation. We take the view that integration, subject to any appropriate transition period, should procure administrative costs savings and should allow consistent application of construction industry policies for all participants. The experience and apparent effectiveness of the ARBV should assist an amalgamated ARBV and BPB to achieve higher levels of compliance with the building legislation.

I'm sorry that was very boring, but it hasn't been made public before and it does form something which is under consideration by this review and I think it's important that it is within the public realm. Then we go on - - -

PROF SLOAN: To us. Okay, we all know about us.

MR WHITE:

Item 4(c) of the terms of reference for this review also required that the commission have regard for the Council of Australian Governments Guidelines for the Review of Professional Regulation, February 1999 published by the Department of Premier and Cabinet, Victoria. Section 3.19 contains the following description of the nature of the market for architectural services.

I have to admit that this is an advanced edition of the guidelines and perhaps it was refined before the final guidelines which the review have used or produced. But 3.19 reads:

In determining which definition of the scope of the market is appropriate to the professional legislation review being undertaken, it may be appropriate for reviews to describe clearly the nature of the market in terms of the following parameters.

First dot point:

Identify the product or products which the profession produces. For example, architects produce building and house plans which are sold to owners/builders and -

dot point 2 -

the range of professional occupational groups which provide that product or products. For example, qualified architects, regulated and qualified draftpersons, unregulated.

Dot point 3:

Locate the market within the production process. Both architects and draftpersons sell skills in different segments of the same labour market to builders/developers. Builders/developers sell project homes in the product market to home buyers. Architects/draftpersons may extend their operation down the production chain to the product market and sell plans as final products to owner/builders.

I'll then go on and say a little bit about the national review, that it has produced a recommendation that state and territory Architect Acts under review be repealed after a two-year notification period. That excludes the Victorian act of course because it's not formally under consideration. We're just remaining aware of the Victorian NCP review.

It is apparent after reading both the issues paper and the draft report that the Productivity Commission have not advanced significantly beyond the example provided by 3.19 of the guidelines for the review of professional legislation in the sophistication of their understanding for the market of architectural services. What could the architectural profession expect? The Vogons had to get them in the end. "What do you mean you've never been to Alpha Centauri? For heaven's sake, mankind, it's only four light years away, you know. I'm sorry, but if you can't be bothered to take interest in local affairs, that's your own lookout. Energise the demolition beams.' Light poured out of the hatchways. 'I don't know, apathetic bloody planet. I've no sympathy at all.' There was a terrible ghastly silence. There was a terrible ghastly noise. There was a terrible ghastly silence. The Vogon Constructor Fleet coasted away into the inky starry void. Then Rem Koolhaas whispered, 'Collapse. This is it. The time has come.'"

Any questions?

PROF SLOAN: Well, thank you for that, and it does provide a useful history. Of course, you could take the history back further. These acts seem to have been reviewed almost to extinction quite a few times.

MR WHITE: Yes.

PROF SLOAN: So obviously the galactic hyperspace planning council has been active for quite some time.

MR WHITE: They've been active for some time, working away, but they've been confounded.

PROF SLOAN: But now, what was the towel there for?

MR WHITE: The towel? Well, The Hitch Hikers Guide to the Galaxy, you might be aware that Ford Prefect and I think it's Arthur were on earth and the Vogon

Constructor Fleet appeared in the sky like bricks don't, and Ford Prefect was actually an alien who was compiling entries for The Hitch Hikers Guide to the Galaxy and he advised Arthur to bring along a towel because they were going to get aboard the Vogon Constructor Fleet and it was advisable to have a towel with you when you went into hyperspatial travel. One of the sad things about The Hitch Hikers Guide to the Galaxy is that shortly after the earth was demolished Prostetnic Vogon Jeltz received a message that a new form of propulsion had been developed which meant that hyperspatial expressways were obsolete and no longer required but unfortunately it was a little too late for the earth.

PROF SLOAN: And what about the big book?

MR WHITE: The big book. Well, if you haven't read this, you really don't know about architecture. You haven't even started.

PROF SLOAN: Okay.

MR WHITE: This is S,M,L,XL which is produced by Rem Koolhaas who, if you don't know about Rem Koolhaas you haven't really been serious at all, because he's probably - - -

PROF SLOAN: Haven't lived.

MR WHITE: Well, you haven't seriously thought about architecture anyway. He's one of the international superstars of the profession and this book actually runs through his projects and his thoughts and S,M,L,XL refers to the categorisation of his projects by size. I sometimes say to my wife that when I write a book it will be called XS. The reference to "collapse" - - -

PROF SLOAN: As like extra small as opposed to excess?

MR WHITE: That's right, yes. What Rem Koolhaas has to say about collapse is that:

There's an enormous tension between the ostensible health of architecture and the actual erosion of its importance. On the one hand, there is this triumphant atmosphere, an incredible amount of publications, incredible amount of programs, incredible amount of attention and celebrity, but on the other hand, an enormous dearth of things of real quality. We may live at the moment. That contradiction is becoming too blatant to cover with this aura of triumph. I sense that the moment is near when it will collapse under its own weight and that will be in itself a very healthy moment because it will allow people to be anonymous again, to do their own research, to not have this kind of perpetual nervousness.

Now, I don't know what it means but I would leave it with you.

PROF SLOAN: Thanks very much, I think I might stick to economics because,

believe it or not, I feel quite passionate about economics, so there you are.

MR WHITE: I'm sure everyone feels passionate about their own chosen - - -

PROF SLOAN: I hope so.

MR WHITE: I sense some similarity between economics and architecture.

PROF SLOAN: Do you? I don't.

MR WHITE: Because they involve a fairly diffuse area of knowledge and they really are essentially subjective in their nature and I think there's actually a very strong similarity between architecture and economics because essentially it's an act of faith in the end.

PROF SLOAN: I'm absolutely amazed you should say that. I could come to the absolute opposite conclusion. This is how we think: let us set up a hypothesis, let's go and find some evidence and let's, on the basis of the probabilities, accept or reject that hypothesis. That's how we think.

MR WHITE: That's essentially exactly the way - - -

PROF SLOAN: We're about trying to choose between competing theories, and it seems to me that architects don't think at all. It has been a dialogue - - -

MR WHITE: No, essentially architects are - - -

PROF SLOAN: That's way too reductionist for you.

MR WHITE: No, no. Essentially architects approach a client and they make a hypothesis based on their client's requirements and that hypothesis is a building and then that hypothesis is tested once the building is built and client occupies it. So in many ways it's quite similar, and the success or failure of a building really ultimately determines whether the architect's initial hypothesis was correct. We prepare designs and drawings based on our research into what our clients require and all we can do - I'm quite a fan of Carl Popper's notions of reflexivity and fallibility - and all we can do is put forward a hypothesis which is our opinion and that's not going to be perfect. It's impossible to be perfect. But ultimately the client tests our hypothesis and a happy client indicates that at least there's sufficient matching of what the architect is thinking about and what the client is thinking about. That's a successful hypothesis. The building that fails is an unsuccessful hypothesis.

PROF SLOAN: Thanks for that.

MR WHITE: I'm certain that in the design of the airconditioning system for the aquarium down on the Yarra that no-one seriously anticipated that people would die as a result of the choice of the particular type of cooling tower.

PROF SLOAN: Well, let's hope not.

MR WHITE: In some senses, it was an unsuccessful hypothesis by someone.

PROF SLOAN: Thanks very much, David, and thanks for your humour. We might break for afternoon tea. Have we got Hamish George here? Yes, all right, we'll come back straight after afternoon tea.

ADJOURNED

[3.35 pm]

PROF SLOAN: You're Hamish?

MR GEORGE: I am.

PROF SLOAN: Okay. Let's recommence the public hearings. Hamish, if you could state your name and affiliation for the purpose of transcript, that would be great.

MR GEORGE: Certainly. My name is Hamish George. I'm a registered architect in the state of Victoria. I'm also a director of a small architectural company, At the Coal Face Architects, who operate here in the CBD of Melbourne. I am also a member of the Institute of Architects and I sit on the environment committee at state level. I'm not appearing here as a representative of the institute.

PROF SLOAN: That's fine. Do you want to have 10 minutes or so to go through your presentation?

MR GEORGE: Certainly. If I could start just very briefly. Where I am is, our company is 12 months old. I've been registered in Victoria for just over five years. My partner Gary has been registered in Tasmania for five years and in Victoria for one year. We ostensibly practise architecture. We do a few things on the side, but the core of our services is architecture.

Perhaps one thing to start off with is that I would like to just very briefly explore what architecture is and how it relates to this inquiry. One thing that I did pick up reading through the draft report is that architectural services appear to be the sum and total of architecture, and that's not the case, or my opinion is that it isn't the case. When - I'm managing to throw myself quite effectively.

PROF SLOAN: Would you prefer me to ask some questions?

MR GEORGE: That might be an easier start, thank you.

PROF SLOAN: Okay. I find what you say is quite interesting, because I think it is true that we - I speak for myself. What about you, Neil? I'm not sure we do fully understand what architects do, as a matter of fact. Can I paraphrase your submission - and absolutely tell me if I'm wrong - which is to say you support the continuation of the Architects Acts, at least for some longer period of time than we're suggesting. Is that right?

MR GEORGE: Yes.

PROF SLOAN: And secondly, though, that you do see some case for improving those acts?

MR GEORGE: Definitely.

PROF SLOAN: Can I just before we go into those substantive points go back to you?

MR GEORGE: Yes, certainly.

PROF SLOAN: Have you always wanted to be an architect?

MR GEORGE: No.

PROF SLOAN: You're unusual. For most people it's a vocation.

MR GEORGE: I've grown into it. One point that I did make in here is that it's a social disease. It gets under your skin.

PROF SLOAN: Is "disease" the right word?

MR GEORGE: Yes, it is. It can be quite dangerous at times because you'll be driving along - - -

PROF SLOAN: I hope you've got some of your colleagues there. Okay. At what stage of your life did you decide to become an architect? Was it a meandering path?

MR GEORGE: It has meandered. It started off at high school when we had a career seminar and architects came along - a Melbourne architect called Graham Gunn came along and he gave his speech and I thought, "That's something I'd like to do." I liked what he was talking about.

PROF SLOAN: Was that because you'd been good at drawing and design or - - -

MR GEORGE: No, I'm shocking at drawing. I'm terrible. It's a skill that I'm learning.

PROF SLOAN: Had you been good at maths?

MR GEORGE: Yes, my scholastic background was maths-sciences with legal studies, so I thought it would be easy.

PROF SLOAN: That sounds strategic. You went to the University of Melbourne, did you?

MR GEORGE: No, I didn't. I went to Deakin.

PROF SLOAN: You went to Deakin?

MR GEORGE: Yes. I'm a bit worried about that reaction.

PROF SLOAN: No, because it's fairly recent, so - does that mean you went down to Waurin Ponds?

MR GEORGE: Yes.

PROF SLOAN: It's improving day by day really, isn't it?

MR GEORGE: My understanding of the course at Deakin is that it was originally run by the Gordon Institute of Technology until the 1970s, when Deakin University was formed.

PROF SLOAN: Yes, actually you remind me, that's true. I think originally it and RMIT were really where, I don't know whether we should call it architecture, but forms of architectural training took - - -

MR GEORGE: Yes, it was part of the indentures process. Rather than being a professional degree, it was a master-servant relationship almost.

PROF SLOAN: So are you unusual in that sense? We've had a lot of young people come along - and I class you as young - - -

MR GEORGE: Thank you.

PROF SLOAN: - - - who sort of actually decide really early on and therefore it's a vocation, but you call it a social disease but "vocation" would be another, "calling"?

MR GEORGE: Definitely, yes. When I first started at university I didn't know much about what architecture was. That changed very quickly.

PROF SLOAN: You enjoyed the course?

MR GEORGE: Definitely. I had an absolute ball, yes. I mean, I failed a year, which was evidence of how good a time I had, but one of the issues that came through was exploring just what architecture was. There is no definition for architecture. I don't know if you saw the program on Channel 2 last night, where the architects were floundering to try and explain architecture.

DR BYRON: In one word, which was a bit difficult.

MR GEORGE: Yes. If they were given any more than that, they'd have just as much trouble. When it comes to - - -

PROF SLOAN: Is that okay, though? I mean, is that just part of the dialectical process, as it were?

MR GEORGE: Definitely.

PROF SLOAN: So when one of them said was it like hugging a child or something - - -

MR GEORGE: Yes - - -

PROF SLOAN: It was hard for non-architects to - we'll have to watch the second and third episodes.

MR GEORGE: When it comes to explaining to or talking with our work experience students what the core of what architects do is, the only thing that I can come up with is communication. That as its essence is what we do. We communicate ideas, we communicate concepts. We try to communicate with builders, we try to communicate with clients. We do that in a variety of forms, through drawings, through specifications, through contracts, through stamping up and down on site.

PROF SLOAN: I suppose that's right. In fact, one of the other architects on that program of course said it was storytelling. Did that resonate with you, that point?

MR GEORGE: I wouldn't disagree with any of them and I wouldn't fully agree with any of them, because it's highly personal, as is just exactly what an architect does when they practise. It comes down to their view of architecture, where they want to take it, what baggage they have with them.

PROF SLOAN: So you graduated, and did you go and work for a big firm at that point?

MR GEORGE: I actually did something rather strange. I started working for Meinhardt, who are a firm of engineers down in St Kilda Road. I worked with their Facade Technology company for a while. That was a wonderful experience, because I spent the first 18 months of my professional career sitting behind two senior structural engineers whose every other word was "F" and it was usually followed by the word "architects". It wasn't actually until about two months before I left that I let them know that I was an architect or that I was an architectural graduate, for fear of my own safety. After leaving Facade Technology I worked with - - -

PROF SLOAN: What is that hostility because they've got - - -

MR GEORGE: The frustration that they cause.

PROF SLOAN: So, you know, they've got these creative designs and they have to deal with the aspects of structural safety and the like.

MR GEORGE: Yes, and the engineers have a very particular bent as to what information they need, what information they don't need, what path they need to go

down, as do the architects. Very frequently the vision of one does not conform with the vision of the other and conflicts arise.

PROF SLOAN: That experience though, with the engineering firm, did that count at all towards that experience you required for registration?

MR GEORGE: Yes, it did. At the time the registration requirements said that you had to have at least two years' experience, at least one year of which must be postgraduate in an architect's office. So the next year I spent in an architect's office working with a firm called Ford Viney Woollen here in Melbourne, and the basis for my employment was basically as soon as your two years are up you have to get registered.

PROF SLOAN: You therefore really in a sense fast-tracked it, because we've heard of a lot of people who take longer.

MR GEORGE: I actually think it's easier to get registered as early as possible.

PROF SLOAN: Why is that, because your memory is still stronger of what you learnt at university or - - -

MR GEORGE: Not, really, no. I think it's because the registration process requires a general grasping of skills. There's a broad range of skills that architects are required to practise as architects.

PROF SLOAN: Before you specialise?

MR GEORGE: Before you focus too heavily, definitely.

PROF SLOAN: So how did you find the registration exam?

MR GEORGE: Nerve-racking. I had major panic attacks, all that sort of wonderful thing.

PROF SLOAN: Good for your personality.

MR GEORGE: It was a character building exercise, I think my father calls it.

PROF SLOAN: But did the process have integrity and value? Let me ask you those questions.

MR GEORGE: I'm not really sure.

PROF SLOAN: Does it make you a better architect?

MR GEORGE: The registration process, no - well, I think it may have because it

meant that I had to have in mind just what it is that architects do. I had to try to define the profession within a framework that is set out by the AACA to know what information I needed to know to communicate to the examiners. The exam when I did it was two one-hour verbal examinations plus the written examination.

PROF SLOAN: Pretty tough, isn't it?

MR GEORGE: It is. It was challenging, and it went into a lot of areas that I hadn't studied that heavily or that carefully, but I obviously answered them correctly or I gave them sufficient confidence in my knowledge and my preparedness to stick my hand up when I don't know an answer and say, "I'm not sure about this. I'd need to check."

PROF SLOAN: Do you know what happened to your pals from Deakin University? Presumably you were quite a tight-knit group.

MR GEORGE: No.

PROF SLOAN: You weren't?

MR GEORGE: No, not particularly. It was a fairly large class. I was closer with the people in other years, which is just one of the things that happened.

PROF SLOAN: Right, because you repeated.

MR GEORGE: Yes.

PROF SLOAN: You were in several years.

MR GEORGE: Definitely, I was. The people that I'd already gone through with, spent the first two years with, had already graduated. The friends that I then teamed up with took years off and we all sort of in the end split up.

PROF SLOAN: It's a bit of that, isn't it?

MR GEORGE: Very much so. It should be a mandated requirement of an architect course that you take at least one year out, not to practise as an architect but to travel and to leave Australia. It should require a passport when you come back to say, "Okay, I've been to at least three countries."

PROF SLOAN: So you don't think you've got any accurate impression of what the graduating class did? Would most have aspired to be registered architects?

MR GEORGE: Yes. Well, I don't know that most of them would have aspired to be registered. Most of them would have wanted to practise architecture. Whether that required registration depends on whether they wanted to practise on their own or

whether they could just happily work within a large firm and under the directorship of others, and probably until 18 months ago I was in the same direction. Even though I was registered, I was reasonably happy to continue in the path that I was in, working for another firm.

PROF SLOAN: Your partner now, he's managed to secure registration in Victoria through mutual recognition?

MR GEORGE: Correct, yes.

PROF SLOAN: So tell us about your firm? It's got a cute little name, hasn't it?

MR GEORGE: Thank you. It took us a little while to come with it.

PROF SLOAN: I don't know whether it actually promoted architecture, mind you, but that's just a very picky point.

MR GEORGE: It's not meant to.

PROF SLOAN: Okay, it doesn't.

MR GEORGE: The idea behind the name At The Coal Face is that we're trying to uncover ideas. We're not at the cutting edge of technology but we're trying to develop new ways of achieving things, new ways of achieving things. To that end we are doing some traditional architecture. We are doing some small renovations for clients' houses, things of that nature, but we're also undertaking broader projects such as urban design guidelines for one of the city councils down in Hobart, doing some work in Bendigo and wherever we can.

PROF SLOAN: How do you go about getting your work?

MR GEORGE: A lot of it so far has been by professional reference from other architects, other design professionals. It's been hit and miss. We haven't gone out seeking much work directly from clients so far because a lot of it has come to us. That's just been the luck of the draw so far.

PROF SLOAN: That's been good.

MR GEORGE: Yes, very fortunate.

PROF SLOAN: I can understand why architects don't like economists. I don't really mind that at all, because we're sort of reductionists types and love to put things in categories and stuff, but you sound as though you're sort of like doing almost consulting work.

MR GEORGE: Yes, very much.

PROF SLOAN: I don't want to offend you, but as opposed to building design work. Would that be true? What you're telling me is that architects are well trained to do, presumably, some consulting kind of work.

MR GEORGE: Yes. Well, I don't think that they're well trained to undertake consultative processes, no, because it isn't part of the traditional model of architecture. It's a skill base that Gary and I have to a certain extent that we are continuing to develop so that we can become as good as we can at doing it. It's just the way in which we view the architecture world - as one in which everyone's view is very important and that it's important, in order to develop the best result possible, whether it's for an architecture project or an urban design project or any project, to have as great a level of client ownership or user ownership of that project as possible.

PROF SLOAN: So how aware when you were a student were you of registration and all that involved?

MR GEORGE: Quite aware.

PROF SLOAN: You were made aware of that from the lecturers and the like?

MR GEORGE: In fourth and fifth years there were two professional subjects which basically went through what life was like as an architect, where we were given the stark statistic that 95 per cent of the graduating class would never get to work as designers: they would be well-paid draftspeople. That was the impression that we were given.

DR BYRON: A sobering thought.

MR GEORGE: Yes, definitely.

PROF SLOAN: Was that realistic, do you think?

MR GEORGE: Yes. From what I've seen of larger offices, there are very few draftspeople employed these days. Many of them are graduate architects or pre-qualified architects who have found a niche doing particular localised functions and they tend not to spread out.

PROF SLOAN: Does that worry you a bit, though, that here are these people, bachelor of architecture, practising at least a subset of what architects must do but can't call themselves architects?

MR GEORGE: No, it doesn't concern me at all.

PROF SLOAN: Why is that - because you've climbed the mountain and they haven't?

MR GEORGE: Yes. Very simply, yes. I do believe that the architect's skills need to be general. If you do try to define your skills too tightly, you cannot practise properly as an architect because you can't offer the broad range of skills required to procure a building for a client.

DR BYRON: Is there a trade-off between the enormous breadth and the depth that's required? Lots of other professions have divided themselves into specialisms, colleges and 10 different types of medical practitioner and 12 different types of engineer etcetera. But with architects it's still one very broad church which covers an extraordinary breadth of skills.

MR GEORGE: Which is having bits nibbled off it every other day, yes.

DR BYRON: Is there a tension between maintaining that great breadth and - well, maybe it explains why it takes the rest of your life to become a really excellent architect, because you're trying to do that much breadth plus sort of infinite depth as well, which is a fairly big task?

MR GEORGE: Yes, I'd agree. There is a trade-off for the specialisation in being broad.

DR BYRON: One of the things that we've been asking lots of questions about is there seems to be a big sort of leakage between the average number of people who graduate each year and the number who get registered two, three, four years later. Yesterday I think we were taking Tasmania as an example: it might only be a quarter of the people who actually do the architecture degree go on to become registered architects, whereas - the example I thought of yesterday - if I'd spent five years studying to be a medical practitioner, I would then certainly want to become a registered medical practitioner. I wouldn't say, "I'm going to spend five gruelling years at university and then, like, hang out somewhere else."

Yet it seems that there's an awful lot of architects who have gone through those five gruelling years at university, which I accept are quite intellectually challenging and demanding and all the rest of it, and we were wondering why such a relatively small proportion, certainly that's the path, go to register. Maybe one of the explanations is that they find themselves a niche, a specialism, which doesn't require the registration. Does that explain most of this leakage or - does it explain that?

MR GEORGE: It explains some of it. I don't know about most of it. I know without doubt there are many reasons. One reason is that quite a few people approach architecture, the architectural courses at university, not so much to become an architect but because of what is offered within the course. I know I bumped into a friend down the street two weeks ago who I did a couple of years with who is now an IT project manager for Telstra. The skill set that the architectural courses provide you with is quite transportable, even though some of the skills are quite specific such as design and papier-mache and things of that nature. They equip you to do a lot of other jobs and they equip you with the mind-set to explore other fields.

DR BYRON: Can I just change the subject slightly. One of the papers on my desk at the moment is from New Zealand and it's called Is Practising the Law a Profession or a Business? I've put this in an architect's context because that's what I'm thinking at the moment, and it seems to me that it has obviously both attributes and there may frequently be tensions between practising a profession and, you know, cold, hard-nosed running a commercial business. You're doing that so I'd love to hear your perception on that.

MR GEORGE: You could barely call what we do at the moment earning a quid, running a business.

PROF SLOAN: I was going to say, your IT friend is probably earning more than you.

MR GEORGE: I was earning close to between two and two and a half times what I did for the past 12 months when I was working for another firm, which is a substantial pay cut.

PROF SLOAN: It might build up.

MR GEORGE: I sincerely hope so.

PROF SLOAN: (indistinct) earnings profile is what we say in economics.

MR GEORGE: There is a very strong conflict there between trying to run a business and trying to practice a profession. There was an interesting article in Architecture Australia a couple of months ago relating to the ethics of architecture and just what it is to be a profession today. What do we profess to claim the title of being a profession. What does society expect in return for that? That's one thing that Gary and I are trying to address, that we give back more than just architectural services, than just business services.

One thing that we're doing is that we're working on a competition entry for an art gallery in Palos Verdes in Los Angeles. We don't have much chance of winning, but because it gives us a chance to do the things that are fun in architecture, the things that keep our minds sharp and focused. It gives us a chance to explore ideas that we don't get to do in our normal projects. It gives us the opportunity to develop the architectural language and the architectural knowledge that will benefit our clients down the path in maybe five, 10, 20 years' time but that are not - there's no way that we could economically justify doing them now. If we wanted to we could be earning quite good money, head down, bum up, doing hack work, for want of a better phrase, but we're not. We don't want to be doing that.

PROF SLOAN: Which some architects do do.

MR GEORGE: Definitely.

DR BYRON: But you're actually making an investment in your future, that you're getting skills and expertise and learning that will presumably pay you in very good stead, five, 10, 20 years down the track hopefully.

MR GEORGE: Maybe. Yes, it's a gamble. We're hoping that it's an investment and not a gamble, yes.

PROF SLOAN: You see, we had some young architects who were very charming come to talk to us. I think one of them was pulling my leg because I asked her why she had done architecture and she said so she could wear black every day. I thought she might have been pulling my leg.

MR GEORGE: Yes, she's from Melbourne?

PROF SLOAN: She was. The other one said something which at first I was a little - I did not verbalise this but I was perhaps a little disdainful of. She said she wanted to contribute to the quality of the built environment. When I thought about it more, that is in a sense what motivates quite a lot of you, isn't it?

MR GEORGE: I'd actually change that statement slightly. I don't want to affect the built environment. I want to affect the built environment that affects people. There's an important point that we're not designing buildings, we're designing shelters for human habitation. We're designing places for people to go. Buildings don't just stand on their own. Well, if you look at most architectural photographs you'd probably believe they do just stand on their own. But people use them, people inhabit them. You want people to feel joy in the right places in architecture and you can do that. You want people to feel possibly oppressed which has been done in the past with the Italian fascist architecture of the 1930s.

PROF SLOAN: Oppressed, did you say?

MR GEORGE: Oppressed, yes.

PROF SLOAN: Yes, you get that a bit in Canberra, don't you? Look, I mean, we can go through this, Hamish, but I think it's well set out. I think you've got some interesting points about disciplinary procedures and the like.

MR GEORGE: Yes, I think one thing that is interesting is just where is architecture going? What is going to happen if the market is deregulated as is being proposed?

PROF SLOAN: We don't use that term, but go on.

MR GEORGE: What term do you use?

PROF SLOAN: We're opting for a strong form of self-regulation in a market which is regulated in many, many ways.

MR GEORGE: Yes, so delegated, architecture per se be delegated?

PROF SLOAN: Yes.

MR GEORGE: Okay. One thing that did particularly concern me was the issue of just how the model that you've come to has been selected because it appears that you've got two different tests, two different standards that have been applied.

PROF SLOAN: Yes, I don't think I understand that point. I think I must be thick. This is on your final page?

MR GEORGE: I think so.

PROF SLOAN: You say, "The PC appears to have two separate tests for legislative intervention."

MR GEORGE: Yes.

PROF SLOAN: Can you use another form of words to explain that to me.

MR GEORGE: At the moment you're proposing a model of legislative intervention, removing the legislation. To justify that legislative intervention you have looked at the existing legislation and said what are the benefits, what are the costs. From reading the report, I could not see that you have looked at the costs and benefits of the removal of the legislation as well and when any other form of regulation or legislation is looked at in the report, that is the standard that is applied to whether it should be moved forward or not. Is that the case, or was that - - -

PROF SLOAN: No, I don't think that is the case but it may not be as explicit as you might want. What are the costs and benefits of a national self-regulation model. Is that what you would anticipate?

MR GEORGE: Yes, but also a comparison of the costs and benefit between the different models.

PROF SLOAN: Yes, that's fair enough.

MR GEORGE: Each model was set effectively as an island. There was no interaction between those islands. There was no comparison of the cost of this model we would expect to be X dollars per architect or whatever.

PROF SLOAN: I'm not sure we get to the dollars but I take your point.

MR GEORGE: Or things along those lines, yes. I guess another issue was that there was no separation within the issues of cost and benefit for costs that are directly

attributed to the start-up of an architectural company or an architectural business and the ongoing costs that are attributed that run through the life of the company. For instance, the regulations, the direct cost to our company at the moment works out at about \$10 per project in terms of the direct effects of legislation on our company. We've had 40 projects last year. It costs us about \$400 per year to maintain our registration through the ARBV. By comparison, my voluntary membership of the Institute of Architects is more than that and when Gary becomes a member of the institute it will be more again.

PROF SLOAN: But dare I say it, you're a member of the institute because you regard the benefits as being greater than the costs as revealed by your actions?

MR GEORGE: No, I'm not sure why I'm a member of the institute at the moment. I'm having trouble seeing the benefits over the costs but I'm there - one of the reasons that I'm there is to contribute to the profession. So to a certain extent it's beyond my own personal or the company's benefits and costs. There is something that I need to provide to the profession on a broader level.

DR BYRON: A non-pecuniary benefit of belonging in the sense that you can contribute.

MR GEORGE: Yes.

DR BYRON: But we're using the word "cost" in a much broader sense than direct cash outlays.

MR GEORGE: Yes, I acknowledge that.

PROF SLOAN: Thanks very much, Hamish. I'm really pleased with individuals like yourself who have actually gone to the trouble of reading the report and putting some thought into making a submission because we realise everyone is busy so thanks very much.

DR BYRON: Thank you very much. Thank you for your time.

MR GEORGE: Thank you very much.

PROF SLOAN: Now, Robert Knott, architect. Welcome back, Robert Knott, architect. If you could introduce yourself and your affiliation for the purposes of transcript that would be helpful.

MR KNOTT: I believe it would be a bit of a waste of time. You have my brief CV.

PROF SLOAN: But you just do need to state your name again.

MR KNOTT: I'll do that, but I don't think I need to go through all that you have there.

PROF SLOAN: No, we don't want you to do that.

MR KNOTT: Robert Knott, architect. I practise as a building and property dispute consultant. By way of explanation, I no longer do design and contract administration work.

PROF SLOAN: You may need to speak up a little bit just to make sure that we get it all on transcript.

MR KNOTT: Is that coming through all right? I have a rather penetrating voice if I speak too loudly.

PROF SLOAN: It's just that we've got some throng out there which is obviously having a good time.

MR KNOTT: I appreciate that. That's why I'm speaking directly into the microphone. Let me know if you need me to raise my voice.

PROF SLOAN: Okay, Robert, thanks.

MR KNOTT: Having said that, I don't know - can you tell me whether I gave you a sheet of summary of dispute resolution experience with my CV?

PROF SLOAN: No, I don't think I've got that.

MR KNOTT: I don't think I did. I'll pass that over to you because that you will give you a little bit - I'm sorry, I should have put that in before because I practise as a dispute resolution consultant.

PROF SLOAN: That will be useful.

MR KNOTT: You will see from my CV that I have practised in a multidiscipline matter, became qualified as a real estate manager in real estate management after my architectural degree. What is also not mentioned there is that at one stage I became

qualified as a sewage engineering consultant and was a member of the - - -

PROF SLOAN: Was that a good job?

MR KNOTT: It served its purpose at the time. I designed quite a lot of sewage and waste treatment plants in the country - country hospitals and places like that. I mention that because my long and varied career has taken various changes and I have undergone continuous professional development beyond the scope of my original architectural training, largely triggered by the period when I was company architect for John Holland and Co which is mentioned in the CV. I'm just giving that as a background to where I'm coming from, as they say in the vernacular, in making my comments.

PROF SLOAN: No, we find that very interesting. Let me also put on record, thank you for your interest in the inquiry. I think you attended the past two days so it's always nice to feel you're not alone.

MR KNOTT: Thank you. I attended for several reasons and don't regret attending and I hope that my attendance is going to make me able to make a better contribution in this brief submission than I would have been able to do if I hadn't been here. I'll address points that have cropped up which I think perhaps I can clarify.

PROF SLOAN: That will be great.

MR KNOTT: The first point in my submission I believe has been fairly well covered by the Building Dispute Practitioners Society presentation which I made earlier. However, I go further than the BDPS committee. I believe that there is perhaps an idealistic aim that should be encouraged in the architectural profession to meet world's best practice and this has been mentioned earlier and in my belief world's best practice is competing with the world's best. That's my definition of world's best practice and I believe that the architectural profession in Australia is doing that and whatever is done with this legislation should enhance its potential to do that rather than hold it back. For that reason, there are a couple of comments that I'll make on the export potential. I have just used those words and I haven't explained what I mean by them.

When I was practising in a "normal" manner I had five employees in my practice and at various times I had students who were overseas students working here. I don't know of the current legal position but I had actually - I mean, I've been in practice since 1964 so I'm talking about a long period. Over that period I had three different students, all who had the same experience. One was from Japan, one was from Fiji, and another was a Malaysian-Singaporean, and their experience was that they had been sent out here with government finance from their countries on some kind of scholarship exchange scheme, I don't know. It doesn't matter for the purposes of this discussion but part of their conditions was that they had to become registered in Victoria. They had to do the practical experience as well as the academic training. The Fijian guy I know in particular, he was a government employed architect, and the

status that he gained in his government employment depended on him becoming

registered in Victoria for that to become a recognised status in his government employment job in the Works Department or whatever they call it in Fiji.

The Singaporean-Malaysian actually went back to Singapore and then came back here to do the two years at the request of the people that had sent him in the beginning. They said, "You've come back too soon, fella. You'd better go back and finish your training in order to become recognised in Singapore," and I understand that his wasn't a government set-up. This was recognition by the Singapore registration authority, whatever they're called, and had a similar experience with the Japanese guy. There was insistence upon them doing the practical experience and becoming registered and it was the Victorian registration that gave them whatever they were sent out here to get, it wasn't just the academic training. Whether that situation still obtains, I don't know, but I'm drawing it to your attention because I believe that you should make - - -

PROF SLOAN: You're saying that there is a case that there is an international - - -

MR KNOTT: There may be. It may have changed since then. I'm talking about more than 10 years ago, the last one, and the first one was probably 25 to 30 years ago but things don't change that much in a lot of these countries and it may be an avenue of inquiry that you haven't pursued, to find out whether there is more to it than just the academic training. My second point about appropriate dispute resolution procedures has also been covered by the Building Dispute Practitioners Society proposal. However, again I go a little bit further. There is a system on foot in England that has been going for two or three years now, referred to as adjudication, and very briefly, this is a system set up by the British government, whereas by right the parties to a building contract which includes architect-client agreements, can refer a dispute - if it's not satisfactorily resolved amongst themselves obviously, unilaterally it can be referred to an adjudicator. At the moment of course, as you would know, in dispute resolution it requires the parties to agree on referring it to an arbitrator, mediator or whatever.

In the British system a complainant can refer the dispute unilaterally to the adjudicator and the way legislation is set up, if the contract doesn't nominate an adjudicator the government department nominates a suitable adjudicator. It's set up to be very quick. Within seven days of the complaint, the adjudicator has to enter his reference as it were. Within 14 days of the notification of the complaint, the parties have to deliver pleadings or claims and rebuttals or whatever. Within 28 days of the start of proceedings, the adjudicator has to deliver a judgment and the parties have to live with it until such time as the contract is finished or until such time as an opportunity arises without interrupting the continuity of the works for them to refer the matter to arbitration or to the courts where the adjudicator's decision may be revised or made out. So far in the appeals that have gone through, the adjudicators have been upheld even when their findings have been wrong at law, which is a rather interesting phenomenon.

You may like to investigate. I understand similar procedures are being

proposed in Queensland at the moment. I don't know how far advanced it is. There's a paper going to be published in the Building Dispute Practitioners Society newsletter in the next issue written by Judge Shelton of the Victorian County Court, commenting on the possible application of that system to Australia. That's the kind of thing I'm talking about in appropriate dispute resolution. The appropriateness of the dispute resolution in my book - and I'm speaking as an arbitrator and mediator - is a system that enables the job to continue, not come to a grinding halt and all the attendant costs and disruption that comes from that. A lot of disputes can be solved that way.

Some disputes are of such magnitude and depth to the parties that things do come to a grinding halt. Architects get sacked, builders get sacked, people go bankrupt, that's a different thing. But there are a lot of disputes that can be resolved in this ongoing way. So that's the type of thing I'm talking about.

PROF SLOAN: I hear all that. I think all this makes sense. It's sort of like alternative dispute resolution mechanisms short of expensive litigation. That's what this is about.

MR KNOTT: Exactly.

PROF SLOAN: Should this be lodged there in an Architects Act though? Is this not broader? I mean, at the moment if you're disgruntled with the service provided by an architect, there's probably not much point going to the Architects Board because they can't offer any restitution and you can go through the sort of - get the people rapped over the knuckles or maybe even deregistered. That might make you feel good for a little while but - - -

MR KNOTT: I make the comment further on - - -

PROF SLOAN: So you're asking for a broader - - -

MR KNOTT: I'm saying I'll read my comments. As you've picked up, the disciplinary procedures presently are not exercised in many cases and I know this statement to be a fact because I've been involved in either adjudicating or acting for parties in these disputes in many cases because the complainants wish to obtain direction for specific performance or compensation for damages arising from inadequate performance. These options are only available at present to complainants by arbitration, litigation or via tribunals in some states and offenders are very rarely disciplined as a result of such procedures. In fact when settlements are made as they normally are in respect of architects with professional indemnity underwriters, there are mutual releases signed which means that after that it's impossible for the complainant to actually make a complaint to the Architects Registration Board because in consideration of the settlement that's been achieved with the professional indemnity underwriters, they've withdrawn the complaint.

PROF SLOAN: That strikes me as being quite a weakness of the system, Robert.

MR KNOTT: This is how the system worked, whereas - - -

PROF SLOAN: Because if you see yourself as an aggrieved customer - I mean, I think I'm going for the money before I'm going for the deregistration of a person.

MR KNOTT: Of course you are. Or if you can get your house furnished.

PROF SLOAN: But, you see, we're told that the fact that no-one is deregistered is a sign that the system is working terribly well, but you're now giving me yet another hypothesis that - and I presume the insurance companies are by and large quite keen to settle.

MR KNOTT: Quite what?

PROF SLOAN: Are they wanting to settle, the insurance companies?

MR KNOTT: Of course. Insurance companies nine times out of 10 settle because they don't want to have costs awarded against them in court. They often let it run for a day. Sometimes they wait until all final pleadings are in and exchange of reports and so on and settle before a hearing. Some matters I've been connected with have run for as much as two or three days. But they settle rather than having a judgment. If they settle rather than having a judgment, even a consent award with an arbitrator, the conditions of settlement usually involve confidentiality and a mutual withdrawal of allegations.

PROF SLOAN: Is that confidentiality of the architect against whom the complaint has been lodged?

MR KNOTT: No, it's confidentiality between the parties. In other words the parties can't publish - - -

PROF SLOAN: Does the public have any way of knowing?

MR KNOTT: No. That's a normal legal procedure for settlement of disputes. Again this is not my opinion, this is my experience of the operation of normal legal procedures, and this could be a reason why there are fewer complaints to registration boards. I mean, I have knowledge and experience and we're having discussions in the Institute of Architects at the moment because in our code of conduct, architects are required to report incidents of misconduct which come to their knowledge in their practice, or which come to their knowledge. I've raised the question - I'm the senior counsellor, and as senior counsellors, everything we discuss is in confidence.

As an arbitrator it would be a betrayal of my function as an arbitrator if I reported architects' malpractice to the Institute of Architects; the same would apply as a mediator or even as an expert witness assisting in court proceedings. So the means of actually disciplining recalcitrant architects, as at present, are very limited.

PROF SLOAN: But, I mean, you're making a very important point because we're really told that we should support this system because it underpins consumer protection and improves knowledge.

MR KNOTT: It would if it worked and that's why I'm saying, I endorse the Building Dispute Practitioners Society proposal that the present system should be kept, but I believe the model act should not only have a code of conduct but it should in its disciplinary procedures embody something like the adjudication system that I've propounded, rather than the present system that they have which (a) doesn't give any redress to the complainants for whatever they've suffered - and it can't because of the way the system is set up - and I also go on in my next paragraph, as you recall:

There's also the opportunity at present for vindictive or vexatious complaints to the registration authorities.

I had experience of that this year where an architect was reported to the registration authority by a neighbour who thought that it would help him to have a bit more clout in a town planning appeal. I won't go into the details because it would be a waste of the commission's time, but basically the complaint made by the neighbour was that the architect had fraudulently misrepresented the situation on the public documents that were used in the application. In the event, the complainant had in fact fraudulently misrepresented the complaint because he had overlaid a photocopy of a photocopy of a drawing over another one which was ostensibly drawn to the same scale but weren't. The result of that exaggerated the fault that was there. So he was incorrect about that. But there was a fault in the beginning because the architect had relied on information obtained from the surveyor.

The Architects Registration Board in fact found against the architect and when I investigated it and found out the full details - they hadn't been given the full details in the beginning - it was found that in fact it was a vindictive and vexatious complaint and it was thrown out in the courts. The Architects Registration Board with their current procedures can't be blamed for that - in inverted commas - because their current procedures didn't enable them to discover the problem with that complaint.

PROF SLOAN: That comes back to some of Hamish's suggestions, doesn't it, for improved disciplinary procedures.

MR KNOTT: Exactly. So we don't throw out the act but we make the system work. The problem is not that the act is there, the problem is that they've got the wrong system or an ineffective system of discipline and dispute resolution. By "dispute resolution" I don't in this instance mean dispute resolution between an architect and the client if they have a dispute, adjudication can come into that quite happily, but an adjudication system could come into a complaint system too whereby an architect or an architect's client could unilaterally bring up a matter to an adjudicator and have a ruling on it through the Architects Registration Board, rather than go through the complicated complaints procedure that is there now.

PROF SLOAN: That's very useful, Robert. I must admit I'm a bit floored in a way because I'm not sure I quite - I mean, we knew that there were many more complaints. It's not being negative about the profession but - - -

MR KNOTT: I can't give you figures, I can only give you - - -

PROF SLOAN: - - - there are many more complaints about architects than there are cases before the boards. I mean, I would have thought the solution to the vexatious claim was that if a complainant is found to be vexatious then they can be lumbered with the costs.

MR KNOTT: There's no provision for that in the current act.

PROF SLOAN: No, but I would have thought - but then you'd probably need this independent tribunal with some legal expertise, otherwise the architects might just tell everyone that they're being vexatious and - - -

MR KNOTT: If, for instance, you had the British system of adjudication, adjudicators in the British system are allowed to award costs against a party. So if an adjudicator in this vexatious and vindictive matter found that it was vexatious and vindictive, the adjudicator could make that decision, award costs against the complainant, the complainant would then still have the opportunity to have the matter appealed at VCAT tribunal or whoever appeals against these things, but my bet is that they would realise that if they did take it to appeal it would only cost them more money. It would be a very cost-effective way of (a) sorting out the vindictive and vexatious and (b) handling complaints. If a complaint was found by the adjudicator to be one which required consideration by the board's tribunal to decide what kind of disciplinary measures had to be taken, well, then the board's tribunal could sit and decide what disciplinary measures had to be taken on the statement of the adjudicator.

The adjudicator could decide no case at all; it was a legitimate complaint; we thought that it was unfounded, or share the costs or whatever; it's a vindictive and vexatious complaint, therefore it's dismissed, therefore you pay the costs; the complaint is sustained, we refer the matters to the tribunal for judgment on what measures should be taken; should the architect be deregistered or suspended or cautioned or what. It's a much simpler and streamlined system than we have now and doesn't involve any more personnel or any more costs. So we don't have to throw out the act to achieve, all we have to do is make it work.

The third point is provision for public information services. I think again you don't have to throw out the act for that. There is certainly greater need - and I believe this could stem from the federal government promoting model acts and the model acts being promoted in turn by the states, again in the same way that the Commercial Arbitration Act was launched and promoted. All states got the message and made it work. I believe there is more prospect of getting the architects legislation remodelled

by the model act approach that's proposed by the Building Dispute Practitioners Society than by throwing it out.

PROF SLOAN: This is an area though where - your third point - the acts aren't very helpful, are they, because all you do is get a list - - -

MR KNOTT: Only because they're defunct and defective.

PROF SLOAN: You get a list of qualified architects, people who have been through a recognised training experience and more examination route, but that's all the information they hold.

MR KNOTT: Exactly. We're saying (a) there should be an annual renewal of registration, professional indemnity insurance and whatever other information needs to go on it, if it's deemed necessary in the community interest. But don't throw it out because it has its place in the structure and you have to rebuild the structure as well. Anyway, we've said all that before.

DR BYRON: If the annual practising certificate had as a requirement for renewal some evidence that one was actually engaged in maintaining currency to avoid the one-off problem, the classic case from Queensland about the guy driving the taxi for 15 years, that that sort of possibility should be precluded.

MR KNOTT: Exactly. Well, my son is an optometrist and every year he has to fill in a questionnaire on his PD activities, he has to fill in a questionnaire on the activities of his practice, what he's done - not his turnover or anything like that - but what kind of procedures he's carried out, what his professional services have been to his patients, and he has to provide details of his professional indemnity insurance and his claim record and that all has to go in with his annual subscription for renewal of his registration.

PROF SLOAN: Yes. I mean, there's not a strong incentive to lie, is there, because they do have spot checks and the like.

MR KNOTT: They do random checks on them. That's how they run it.

PROF SLOAN: You'd be foolish to be misrepresenting what you did.

MR KNOTT: You'd be risking your whole professional career because it would be seen as a final termination offence. I mean, minor inaccuracies or something like that when it's audited can possibly be ironed out, but as I understand it, it works very effectively in the optometry profession.

PROF SLOAN: And there are quite a lot of others. My husband is an obstetrician and they have that.

MR KNOTT: That's the type of thing we're talking about. Coming down to the other detailed comments, in respect of multidisciplinary businesses, I take issue with you there on the effective financial control bit, because once you set up rules for

practices and partnerships, unfortunately it's a bit like trying to legislate honesty. The legislation has to be a catch-all. The exemption for husbands and wives in the Victorian act seems to work very well, but the point that I'm making in this paragraph here is that:

It certainly would not be appropriate for a real estate agent, property developers or building contractors to purport to offer independent, professional architectural services or any other professional service which would protect the interests of the customer or client if that service had been provided by an independent consultant.

I think that's a self-evident statement.

In-house design services should clearly be seen as tailored for the provider organisation rather than to protect the client or customer.

A lot of the issues that's taken by registration boards, particularly the Victorian one, against some of the publicity by real estate promotion officers, is the inference in the way the promotion material is presented that the fact that they have architects on their staff is going to protect the interests of the customer. I think unless there is some code in the code of conduct attached to the registration procedure it is going to be very difficult to give credibility to either architects or your building - that would even apply in your building designers cases or any professional who's in a corporate entity which is purporting to offer professional services which would in fact protect the interests of the customer or client if they were provided by an independent consultant rather than by the in-house consultant. That's the basic point that I'm making there.

DR BYRON: The term architectural or architect designed house I presume has connotations of, "This house is a unique one-off."

MR KNOTT: Some even say tailored to your requirements. "You can come in and talk to our architect and our architect will tailor this house to your requirements." That's commonly in the advertisements. That's the type of thing I'm getting at, not the general architect designed house. Some invite the clients to come in and, "Talk to our architect and he will either modify one of our plans or he will design a special house tailored to your specific requirements."

DR BYRON: The defence, I guess, that the project home builders have put to us is that by being project home builders, it's not a defence against that particular accusation I guess, but they're saying that because people can come and look at a display home and come in and say, "I want that one but in a different colour," or, "I want that one but turned around the other way," people know exactly what they want. It seems to me that the essence of many what we call professions is the element of trust, that the client has to trust the expert professional knowledge and judgment of the provider.

MR KNOTT: Can I just - - -

DR BYRON: I just wanted to elaborate. If I'm thinking of a unique one-off home, the like of which doesn't exist anywhere in the world where my architect is going to design especially for my family's requirements, that's quite unique and there really is an element of trust that the architect whom I briefed really understands and will deliver. If I go to a project home builder I don't have to have the element of trust because I can see three of them down the road and I could decide whether I like them that way. The project home and the genuine one-off architect designed home have very different implications for the relationship between the customer and the person who designs it.

MR KNOTT: We will take the two examples you've given. You obviously didn't understand what I said earlier. Some project home firms are offering to design for you a unique home for you. They are offering that service and they say, "Come in and talk to our architect and we will tailor this house for you."

DR BYRON: In that case the in-house architect is clearly not equivalent to an independent architect, no.

MR KNOTT: Exactly. In the other case I had - I won't mention the name of the house builder, but it's one of the most famous in Victoria. The owner went and looked at a show house and they decided that this show house was what they wanted. It was the only one that they had found that had high enough ceilings to accommodate the furnisher. The lady who wanted to buy the house was the widow of an antique dealer and she had a lot of very high antique furniture. Her son, unmarried son, lived with her and he carried on the father's antique business and they wanted this house (a), to accommodate the furniture that they had and (b), as a kind of show place to show their furniture. It was a very large house that had very large rooms, as I say, and very high ceilings.

They went round with the project home architect and the project home people were very thrilled that someone had actually come along to buy their whiz bang enormous whatever they called it house because they didn't sell so many of those because they were so big and they had so many big rooms that not many people wanted them. They thought this was a great sale so they signed these people up and they built this house for them, down the Mornington Peninsula, and when they came to move the furniture in they discovered that the ceiling was three brick courses lower in the house that they had built than in the house that they had had a look at so they got onto the developer, house supplier, and said, "This is not the house we paid for. What are you going to do about it." They said, "Well, you signed the contract on it. On this drawing that you signed here it quite clearly stated the ceiling height and you signed the contract to buy this house."

Anyway, it finished up in court, otherwise I wouldn't have known about it, and the damages were quite substantial. The architect in that case was acting - obviously it was an architect - this firm did actually employ qualified architects. The architect

was showing these people around and the architect was in no position in the firm - I

don't think the architect knew that in fact this house was being built. Three brick courses is a lot of difference in the ceiling. So in both of the cases that you gave there are problems with architects employed by home building companies and I have seen them in my dispute resolution practice, in both cases.

PROF SLOAN: Robert, we're going to have to move on because - - -

MR KNOTT: Yes, we're nearly there I think.

PROF SLOAN: We have I think gone through - - -

MR KNOTT: We have gone through it. Actually, there's a point I wanted to make about registered architects who designate their practice as design consultancies. There's one big office in Melbourne, and I don't mind giving you their name because it's in the public domain - it's Geyer Design and they are architects. They employ architects and they provide architectural services but they call themselves Geyer Design. The only point I'm making here is that there is no hindrance at present for people, architects and non-architects, to advertise their services and neither appears to be in any way disadvantaged by the protection of title.

I heard what the building designers said. I mean, they can advertise their services as building designers and they can even list all the services that building designers provide if they want to and if architects decide to call their name Geyer Design rather than Geyer Architects that's up to them. They have a big office in Melbourne and a big office in Sydney and do a lot of work for big corporate clients. It's not a problem. They just decided to do it that way. National registration: I think that speaks for itself. Disciplinary procedures we've mentioned and code of conduct, I think I've touched on that particularly in respect of conflict of interest provisions and their activities. I think I've covered it.

PROF SLOAN: Thank you again very sincerely, Robert. You've spent a lot of time here and time putting together your submissions. In fact, you know, when I was growing up as a young girl I lived in Alma Road, North Caulfield, so we were neighbours.

MR KNOTT: We were neighbours. Well, we've lived there for 43 years.

PROF SLOAN: We lived in an old barn of a house and I'm not sure it was architect designed. It's still there actually. Thanks very much.

PROF SLOAN: Have we got Phillip Davern? Is that how I say Davern? Thanks very much. I know you've come at relatively short notice but I think, and I know you've been here a bit, that your expertise is very germane to some of the issues that we've been discussing. Would you like to just tell us your name and your affiliation for the purpose of transcript?

MR DAVERN: Yes, certainly. My name is Phillip Davern. I'm the registrar of the Building Practitioners Board in Victoria.

PROF SLOAN: It would be probably most useful to tell us about the Building Practitioners Board to start off with.

MR DAVERN: Yes, I'm certainly happy to do that. It just might be relevant before I do that to perhaps just briefly outline my background. I suppose it's fair to say that I've got both a personal and a professional interest in this matter. I'm professionally a qualified building surveyor and a tertiary qualified, dare I say, architectural draftsman. That's a dirty word at the moment. And like someone here earlier today I also studied in the bachelor of architecture degree for five years, not finishing though.

PROF SLOAN: But you could press on and get registered if you really wanted to.

MR DAVERN: Possibly. I also lecture in the architectural drafting course at TAFE level as well so they say that it's - when you go for a job interview it's wise to position yourself either first or last in the pecking order so I appear to be last. I don't know whether that's going to be an advantage or not.

PROF SLOAN: No, we've got one more. We've got one more.

MR DAVERN: Have you? That's good.

PROF SLOAN: You're not quite the marathon runner.

MR DAVERN: I suppose just - I will take the time to just very briefly outline the constitution and the role of the board just for your information, if for no other reason. The board is empowered under section 193 of the Building Act which came into effect on 1 July 1994. That piece of legislation amongst other things provides for the establishment of the board and the board to do these following things - these are functions outlined in the act: administer a registration system for building practitioners, supervise and monitor the conduct and ability to practice of registered building practitioners, make recommendations to the minister about qualifications for registration and the perennial and any other function conferred by the act or the regulations.

The membership of the board is by appointment of the governor in council on the recommendation of the minister and that membership basically comprises an independent chairperson and other members are appointed to represent the specific

practitioner categories.

PROF SLOAN: Is there a consumer representative?

MR DAVERN: No. I was about to add that the current term of the board expires in May 2001 so the current board has only got a 12-month appointment unlike previous boards that have had three years. I would suggest that it's likely at the expiration of that 12 months that the board will change significantly both in terms of gender balance and consumer representation. I think the current governor has made it very clear that it would be looking at those things fairly closely.

PROF SLOAN: So can you tell me the kind of professional/occupational representation that's there at the moment?

MR DAVERN: If I run through the practitioner categories that will answer that question.

PROF SLOAN: That would be great.

MR DAVERN: The practitioner categories at the moment are building surveyor, building inspector, engineer, and engineer has four separate subclasses to that. They are electrical, mechanical, civil and fire safety, quantity surveyor, draftsman, and within the draftsman category there are three subclasses: architectural, services, which includes electrical, mechanical, and interior design, commercial builder, domestic builder and persons who supervise or erect temporary structures; tent structures, temporary grandstand seating for sporting events, etcetera.

PROF SLOAN: Grand prix and stuff.

MR DAVERN: So each of those practitioner categories has got a representative on the board.

PROF SLOAN: And not sort of electricians, plumbers - - -

MR DAVERN: They've got their own separate registration system. The plumbing industry commission look after plumbers and I'm not too sure who controls - I think it's the chief electrical inspector controls the registration and conduct of electricians so, no, neither of those sub-trades if you like.

PROF SLOAN: Tell us how it works or is that really a difficult question.

MR DAVERN: No, in what respect do you mean?

PROF SLOAN: So you've got your - you are essentially holding - how should I put this. It's lists of building service practitioners who meet certain competency standards and - - -

MR DAVERN: Yes, I can go through the assessment process or registration process.

PROF SLOAN: Yes.

MR DAVERN: We currently have 20,000 registered practitioners and I've got a graph here that I'm happy to table for your information that breaks down the numbers in each of those categories. I can leave that with you. Just in terms of our friend the architect, they're not deemed as registered building practitioners however the act allows that if they're registered and carry the appropriate professional indemnity insurance cover they are able to use the title, building practitioner, or registered building practitioner however the board has no monitoring role to play with respect to that professional group.

The assessment process for each category of practitioner is essentially dictated by two distinct criteria. Firstly, the Building Regulations 1994 prescribes the qualifications and experience relative to each category. It should be noted and I want to highlight and emphasise the fact that strict compliance with those prescribed qualifications don't automatically guarantee, or doesn't automatically guarantee registration. Complementing the formal qualification aspect of the regulations is the statutory requirement to be of good character. So there's a good character test that has to be applied.

PROF SLOAN: Do you think that really works though? How many do you knock out for being of bad character?

MR DAVERN: In the assessment process or subsequent to that?

PROF SLOAN: Well, certainly in the assessment process.

MR DAVERN: A handful.

PROF SLOAN: We had the former registrar of the Victorian Architects Registration Board. His view was that, pointless.

MR DAVERN: The good character test?

PROF SLOAN: Yes.

MR DAVERN: It's a view. Also of course the other component to that is that they carry the prescribed insurance. The second - - -

PROF SLOAN: Sorry, it's a competency test or a sort of quasi-competency test? I mean, you're relying on the kind of prescribed kind of training/experience routes of these different groups. There's no one model, is there? You're not actually doing any of the accrediting yourself?

MR DAVERN: No.

PROF SLOAN: You're just checking on the processes in effect.

MR DAVERN: That's essentially an administrative role in terms of the information that's provided.

PROF SLOAN: Yes.

MR DAVERN: The second of those two criteria that I mentioned and I think arguably the more relevant test to the registration process is the need for an applicant to demonstrate an ability to meet the professional standards expected of that practitioner group. This is generally achieved through a formal interview process with the applicant by the board member responsible for that category or in the case of domestic builders that process is done via externally appointed and trained workplace assessors. I might add that our domestic builder assessment process is considered nationally probably the best. I will give you - - -

PROF SLOAN: The history of this of course is very much concern for the consumer, isn't it? This is why it arose really.

MR DAVERN: Consumer driven, yes, notwithstanding that there isn't consumer representation on the board. I think it is very much consumer driven. I will also leave with you a chart which gives a breakdown of the outcomes of applications for registration as a commercial and domestic builder. I haven't got them, unfortunately, for the other practitioner categories for a particular month, so you can see out of the number that apply how many get through, how many don't and what reason.

So that's the assessment process in general so it very much varies between categories as to I suppose the level of competence expected. I mean, it is, I suppose, assumed that the board member responsible for those categories has an understanding of the level of competence and expertise necessary for registration in that particular professional group and administers that accordingly.

DR BYRON: Would that mean that the board member that actually has to interview and assess all the people in his area has enormous control as the guardian, the gate keeper, that if he didn't like you then you were never going to get on the register no matter how many times you've appeared?

MR DAVERN: You've got an appeal mechanism. There's an appeal mechanism to the Building Appeals Board which is a separate body from the Practitioners' Board and - - -

PROF SLOAN: They're not really trying to set the hurdle too high, are they?

MR DAVERN: I think they try very hard to make sure it is at a level that both the profession expects and the community expects.

PROF SLOAN: But you don't not get in because the board member doesn't like the cut of your jib?

MR DAVERN: I would like to think not.

PROF SLOAN: You would hope not.

MR DAVERN: As I've mentioned, another function of the board is to monitor and supervise the conduct of and ability to practice of registered practitioners. This is achieved through a random audit process as the commission has heard earlier today and also via the investigation of specific complaints. The board conducts approximately 60 inquiries per annum, the majority of which relate to the unprofessional - or alleged unprofessional conduct - of a particular practitioner. Most of the inquiries result from the complaint investigation process but some do originate from the random audits. The board is able to impose penalties ranging from cancellation of registration to reprimand, to a reprimand, in conjunction with a maximum fine of \$5000. So I suppose in a nut shell that's the board.

PROF SLOAN: How many penalties would be meted out in a year? Do you have to publish those figures?

MR DAVERN: Yes, they are published in the In Form magazine which is a magazine published by the Building Control Commission on a quarterly basis so the results of all inquiries are published in that.

PROF SLOAN: Presumably people would take it quite seriously, deregistration?

MR DAVERN: Yes. There's been a growing tendency in recent years for practitioners to have legal representation at those inquiries, whereas initially that wasn't the case. So I think that reflects that view that they do take the process fairly seriously.

DR BYRON: Their livelihood is at stake?

MR DAVERN: Yes.

DR BYRON: Pretty serious?

MR DAVERN: Yes. I will also leave you with a graph that gives a breakdown of the inquiries, how many the board has conducted over the past four years and what the decision has been in those inquiries. So, yes, as I said, that is in a nutshell the board; what it does. In terms of, I suppose, what we're here today for - I don't know that the board has got - - -

PROF SLOAN: No, you might just want to offer a personal view.

MR DAVERN: I certainly think the board has expressed a view in the past that it would prefer that the architects were brought under the umbrella of the Building Act. That view has already been expressed here today.

PROF SLOAN: Do you see problems to that? Would it not keep intact virtually all the features - all the good features, I suppose, that exist - for example the education, training and registration process - no problem with that at all presumably in - that could - - -

MR DAVERN: The actual registration process would not necessarily have to be done under the current regime of course though.

PROF SLOAN: No, no. It seems to me really the thrust of what we heard of the MPC review of the Victorian act was really - that was - I mean, that was the big picture recommendation essentially.

MR DAVERN: Yes, and the board supports that. I mean, at various times throughout the inquiry the National Professional Engineers Register has been mentioned. That is a mechanism by which engineers can be registered with the board as well. I did a quick calculation earlier today - out of 70 applications for registration as an engineer, about 30 have gone through the NPR process.

PROF SLOAN: I presume also like with the building surveyors - you know, it's the common route for them to have gone through the building surveyors - - -

MR DAVERN: BSAP?

PROF SLOAN: BSAP?

MR DAVERN: No, no.

PROF SLOAN: That is more in New South Wales.

MR DAVERN: Not in Victoria. I will make a comment - and I am not sure of the protocol of the inquiry, as to whether I am able to comment on things that I have heard mentioned here - I can, good - because I did have a concern that it was suggested that there currently is a national statutory registration system in place for building surveyors.

PROF SLOAN: No, we didn't say statutory.

MR DAVERN: No, not you said.

PROF SLOAN: Okay, sorry.

MR DAVERN: Someone sitting in this seat said - - -

PROF SLOAN: Okay.

MR DAVERN: Because that clearly isn't the case.

PROF SLOAN: No.

MR DAVERN: I mean, Victoria, Tasmania and Western Australia don't recognise BSAP and in Victoria I doubt ever will, given their gradings of building surveyors and what they can and can't do. It is basically fundamentally opposed to what we believe is the - or what the board believes is the appropriate system. So I don't think it can be called a national system, given that.

PROF SLOAN: No. So how do your building surveyors get onto the register?

MR DAVERN: Basically through completion of the prescribed qualification. Building surveying is probably one of the few categories of practitioner whereby meeting the prescribed qualification is almost fundamental to being registered, whereas that not necessarily is the case with the other practitioner categories - so completing the prescribed qualification, which is a degree in building surveying, and four years experience. Can I maybe - if I'm allowed - if I've got carte blanche, to make comments on things that I've heard said.

PROF SLOAN: That would be very useful, Phillip.

MR DAVERN: Can I also make this comment. I heard a suggestion, I think yesterday, from the Architects Registration Board of Victoria that they tendered evidence that a community based organisation - SOS, Save Our Suburbs - some 20,000 strong had reached a policy position of requiring the engagement of only architects on certain building projects. I can't quite recall what those projects were.

PROF SLOAN: They are the SOS projects presumably, but never mind - - -

MR DAVERN: I suppose I would just like to make the point that they're fairly prominent figurehead and spokesperson is in fact an architect so I would suggest it is hardly surprising they have come to that policy position. The other thing that was interesting - it hasn't been actually mentioned in this forum but on the question of the Architects Registration Board being able to properly and efficiently administer complaints - it is interesting to note that the Building Practitioners Board had an inquiry from the Architects Registration Board on the possibility of engaging our investigators to undertake investigations on their behalf. So I would suggest that that clearly indicates that they haven't got the ability or the resources to be able to handle that side of their functions properly.

PROF SLOAN: I suppose at least it is an acceptance of the need to provide some kind of independent disciplinary procedure which is not just part of normal board proceedings - so I suppose they are, in effect, trying to sort of contract it out or

something.

DR BYRON: Yes. I think we have also been told in a few states that the Architects Registration Boards rely a lot on voluntary service because they run on a shoestring and a lot of submissions we receive point out how low cost the Architects Registration Board system is but it is also relatively low in terms of the services it can deliver too. One of the things that it typically hasn't been able to deliver is independent investigative mechanisms.

MR DAVERN: Yes.

PROF SLOAN: Can I raise the issue of reservation of title. Your people under the - your registered building practitioners, do they have legally reserved title?

MR DAVERN: There is restrictions on the use of some titles, building surveyor, building inspector.

PROF SLOAN: So I can't call myself a building surveyor?

MR DAVERN: No, not unless you're - - -

PROF SLOAN: Or is it more limited than that? I certainly can't call myself a registered building surveyor of Victoria. It's the more general - - -

MR DAVERN: No, it is the word "building surveyor" - yes.

PROF SLOAN: That is very interesting. I didn't know whether reservation of title could be included as part of the inclusion of architects in the Building Act.

MR DAVERN: Sorry, it is not so much the title, it is actually practising in that capacity. Can I read out the provisions - - -

PROF SLOAN: So, in effect, is it more that you're licensing certain activities which can only be done by these registered nominated practitioners?

MR DAVERN: The provision actually says, "A person who is not registered under this part as a building surveyor must not practice as a building surveyor."

PROF SLOAN: So that is really licensing certain activities, in effect.

MR DAVERN: Yes. There is an overriding obligation in our legislation that, regardless of what you've been registered for and to do, you are unable - or not permitted to act outside your level of competence. So regardless if you have been registered as a building surveyor, if all you have ever done is issued permits for garages and someone walks in and wants you to issue a building permit for the Rialto, you are unable to do it on that test. That applies to all practitioner groups.

DR BYRON: So how does one increment your knowledge or status? How do you experience - - -

MR DAVERN: Go on to big - - -

DR BYRON: But if you can't do something more complicated than what you did last time, how do you ever move up?

MR DAVERN: You can't do something more complicated than what you did last time in your own right.

PROF SLOAN: Without supervision.

MR DAVERN: Certainly there is an opportunity to have that through a mentor system and working under supervision.

PROF SLOAN: You can't leap from the garage to the Hyatt overnight, Neil. Is that the idea?

MR DAVERN: That is not the intention, no.

PROF SLOAN: But you can - - -

MR DAVERN: Work your way towards that.

PROF SLOAN: - - - work your way up. Presumably you would need people working their way up to get that expertise.

MR DAVERN: It is the same for a draftsman in documenting those projects, the same philosophy applies.

PROF SLOAN: You heard - maybe you didn't hear Robert Knott who is not such a rare bird, I suppose - but he has got a particular interest in alternative dispute resolution mechanisms affecting the building industry. I mean, he didn't agree with me but it seemed to me that what he was saying was that with this idea of sort of joint liability that that provided quite a strong case for putting the architects in under the Building Practitioners Board because then it sort of underpinned the philosophy of joint liability and probably streamlined the administration of it.

MR DAVERN: The doctrine of the whole act is on those lines, yes. I would agree with that.

PROF SLOAN: Whereas at the moment you have got most building practitioners in under your auspices and a few sort of orphans. Did you want to ask anything more? We would be very happy to have your written notes and the like.

MR DAVERN: I will leave it here.

DR BYRON: I am very glad you took the trouble to attend. Thank you very much.

MR DAVERN: My pleasure.

PROF SLOAN: Thank you very much, Phillip. Can you call yourself a building surveyor?

MR DAVERN: I am not currently registered. My current position prevents that.

PROF SLOAN: Just Phillip in that case.

PROF SLOAN: I now call Andrew Begg, architect. Let me say - I don't know whether apology is the right word - but I understand, you know, you have had some difficulties. I am glad you can participate in this way. I know it is difficult. Are you suffering jet lag?

MR BEGG: No, I have not, Prof Sloan.

PROF SLOAN: That is fine.

MR BEGG: I do apologise for not having participated earlier but I was unaware of your report when I left for America. I arrived back in time for the architects show last night and then got here this morning.

PROF SLOAN: That is fine. We weren't trying to - - -

MR BEGG: No. I haven't had an opportunity to produce some written notes but if that is appropriate and you want them, I can certainly try and gather my thoughts together for you later.

PROF SLOAN: If you could state your name and affiliation for the purpose of the transcript.

MR BEGG: My name is Andrew Begg. I have a bachelor of architecture from Melbourne University. I am a fellow of the Royal Australian Institute of Architects. I am a founding fellow of the Institute of Arbitrators Australia. I think it is probably relevant, in view of what I have got to say, to give a brief summary of my experience.

PROF SLOAN: You're also a member of the Architects Registration Board of Victoria?

MR BEGG: Yes, but I am not appearing in that capability today. I want to make some comments later.

PROF SLOAN: Yes, but I think it is worth - - -

MR BEGG: I was in private practice for 15 years. Then I joined the government and I was in charge of a major division of a government department employing 300 people and employing a large number of private practitioners of architecture. After that I joined the RAIAs as practice director in Victoria. I am an arbitrator, as I have mentioned. I am also a mediator and I have been on the Administrative Appeals Tribunal in planning matters. I am currently a director of the Housing Guarantee Fund and a member of the Architects Registration Board. I have been a founding director of Archicentre, which you may have come across.

PROF SLOAN: Yes.

MR BEGG: And a founding director of Architeam - to organisations which have been organised to promote architecture.

PROF SLOAN: Sorry, that latter one?

MR BEGG: Architeam, it is a cooperative designed for smaller architectural practices to help them get established. Personally I don't feel at all threatened by the prospect of the loss of ownership of the name architect - and that's not why I am here - but I would like to make some comments about the profession and particularly in view of what I have heard today. I am sure you have already come to the conclusion that the profession is largely constituted by people with fairly big egos. It also has a rather confused leadership. About 58 per cent of architects are members of the institute. That includes most of the big end - or pretty well all the big end of town. 85 per cent of that RAI A membership, however, is constituted by smaller practitioners, most of them sole practitioners.

The rest of architects are almost universally from the small end of town or they are employees of architectural firms. That group of architects are not represented by any professional body. I think that is an important point to make because it is - - -

PROF SLOAN: There are some other states. For example, in Queensland there is a group called the Sole Practitioners Group.

MR BEGG: Yes, but they are mostly members - I think all members of the institute.

PROF SLOAN: Probably but they do have a separate organisation.

MR BEGG: Yes. I am saying that of architects only about 58 per cent are members of the institute.

PROF SLOAN: I see what you're saying.

MR BEGG: Other architects are not represented.

PROF SLOAN: Not represented at all.

DR BEGG: At all, that's right, either - although that is not entirely true, employees have some form of representation through their office. My principal concern today is that in looking at the key elements of your findings in the draft report the accreditation of schools has not been covered as a key element. The hearing today did touch on accreditation but I thought inadequately. The AACA was mentioned as a possible privatised vehicle for accreditation but the AACA is a creature of the state and territory boards and has no constituency itself. A privatised AACA is hard to imagine. I can imagine several privatised AACAs but I can't see how directly we could achieve a privatised AACA with proper representation from the big constituency of architects, particularly the unrepresented ones.

PROF SLOAN: Would you like to - - -

DR BYRON: If there is a method of achieving that I would be very interested to hear it.

PROF SLOAN: Would you like to just go briefly through what you understand to be the process of accrediting university courses.

MR BEGG: Yes, I am fairly familiar with it. It is the state or territory responsibility under the individual acts. The RAIA usually cooperates - in fact, invariably cooperates with the relevant board to send a deputation. That is done every five years. There are visiting panels betweenwhiles and reports given on the relevancy of the course offered to the criteria set out in the education document.

PROF SLOAN: But it is true that the RAIA is involved in that process at the moment.

MR BEGG: Yes, involved in it but they do not have any legislative responsibility for accrediting - - -

PROF SLOAN: No, not at the moment.

MR BEGG: Given that not all architects are members of the RAIA, my concern is that alternative organisations could well emerge which would in fact attempt, with cooperation of some of the schools of architecture, indeed achieve accreditation at differing standards from the ones we have at the moment. Looking to the future - - -

PROF SLOAN: Bear in mind - being an academic myself - I do understand how different faculties are accredited. Of course a lot of it doesn't rely on government agencies providing accreditation at all.

MR BEGG: I agree.

PROF SLOAN: So there are different models.

MR BEGG: Also you are very well aware - - -

PROF SLOAN: Fine models too.

MR BEGG: Yes. You are well aware, I think, that there is a very competitive element out there for the tertiary dollar. There is also a lot of competition to promote courses between institutions. There has been a number of institutions - I think there are 13 schools of architecture around Australia, around that number. There are many more TAFE courses offered. My concern is that there will be blurring between the drafting technicians courses and the architecture courses, given the competition for funding, and the impact of the pressure for reduced years, taking the five years down

to four years. Some of the schools of architecture are presently talking of doing that. Also the proposed - I know Deakin at the moment are proposing to offer a master of architecture as the undergraduate degree. I saw that proposal come forward earlier this year. In that competitive environment - - -

DR BYRON: Is that innovation not quite a good thing?

MR BEGG: I am not uncomfortable with it at all but I am simply pointing to the fact that those pressures are like to produce a diversity of accreditation procedures, not one uniform accreditation procedure because there will be no legislative compulsion to use AACCA Pty Ltd, as the commission has mentioned, because it may well be two or three AACCA Pty Ltds serving the interests of different courses. Unless we have a model which avoids that potential confusion I think we have got to be very careful before we deregulate architects.

DR BYRON: I am reminded of when Bond University was set up and they were offering commerce degrees and law degrees, one year less than the norm - or basically what every other Australian university was offering. These were of course full fee paying overseas student courses. They also took a lot of Australians too.

PROF SLOAN: Locals.

MR BEGG: They had a much more intensive course in those years, more hours.

PROF SLOAN: Three semesters.

MR BEGG: Yes.

DR BYRON: But the bottom line of it is that the course to attract students, whether local or overseas, has to be seen to be quality and whether it's accredited by a highly respected international institute or by, you know, Joe Bloggs Accreditation Services Pty Ltd, the accreditation is only as good as the name that's behind it, so that if I or the Neil Byron University of Architecture was accredited by whatever, the accreditation itself is quite meaningless.

MR BEGG: Yes.

DR BYRON: And so it's the certifier, and he who is certified, both have an interest in the strongest possible accreditation standards, of credibility, and hence the rigour and so on of the process.

MR BEGG: Dr Byron, you may have come across in these submissions the organisation called Oceania Polytechnic, Victorian example of a private school of architecture, which I'm sure - I don't think it's in existence now, I haven't heard of it in the last couple of years, but - and I saw an auction of its premises a couple of weeks ago - but if it was still in existence I'm sure that is the type of organisation which would exploit an accreditation procedure which was denied it under

the previous

system.

PROF SLOAN: When you say "exploit", that sort of thing wouldn't be accredited. I mean, the Bond example is good. I mean, the Bond Law School is highly regarded.

MR BEGG: I have got no problem with it, no.

PROF SLOAN: And it has been accredited by exactly the same bodies that accredit the law schools in the public university.

MR BEGG: Who will be this body that accredits architectural courses?

PROF SLOAN: I think that's a very fair point to make but - - -

MR BEGG: And how will we ensure that there isn't a proliferation? I mean, they're the two questions I'm putting to you.

PROF SLOAN: That's a different issue but the point about - I don't think we necessarily - and this doesn't happen at the moment, we don't necessarily want an accreditation process which leads to every university architecture course being identical.

MR BEGG: I don't think that happens at the moment and it won't happen in the future.

PROF SLOAN: I mean, one academic said to me about two-thirds of architecture courses are really essentially the same and the third differentiates so we might be wrong in saying this, but as I understand it RMIT has this reputation for design and photography and whatever, for the sort of perhaps more artistic end of things, and that's not bad, is it, the fact that different schools are seen to - that's good for student choice, isn't it?

MR BEGG: I'll touch on that but I want to touch on the difference between the registration procedures for engineers and architects in just a little while and I think you'll see where my thinking goes there.

PROF SLOAN: Okay, that will be good.

MR BEGG: But I would like to leave you with those two questions.

PROF SLOAN: Yes.

MR BEGG: What guarantees do we have that there won't be a proliferation of accreditation organisations, and of course who will those organisations be, and who will be represented, how will the profession of architecture and the public be represented on those bodies? The other point I had made - one of the problems

facing

the profession is that there is a very clear divide between the big end of town, the big firms, who in a sense operate independent of any registration, any recognition. Their names are well-known to potential clients and they don't rely on any qualification issue, and never will, but at the other end of town the small firms, and they are in fact the overwhelming majority of architects. They're fishing round, I think, at a financial level which is well below what it ought to be for several reasons. One is unfair competition and that has been touched on many times, I imagine, before you. Another reason is poor education to achieve the skills they need to practise successfully.

PROF SLOAN: Sorry, so expand on that.

MR BEGG: Well, their business skills are - - -

PROF SLOAN: So they don't get good business skills.

MR BEGG: They don't get an elementary business education in the school of architecture so that they're being groomed to do something which they will never do in the schools. I think that has been an endemic problem. It's one of the issues which will concern me in any revised accreditation system and we might even get a worse result because we'll have schools lobbying for accreditation processes which enable them to design courses which suit the philosophical bent of the deans of the various schools and that may well not include business education and may well not include the business and practise of architecture, the professional aspects of architecture, which I think are of fundamental importance at this nitty-gritty end where you have to be a generalist.

DR BYRON: That sort of relates to my comment to Hamish earlier about both the profession and the business of architecture.

MR BEGG: Yes. I do want to - - -

DR BYRON: The harsh reality is that if the business end of it is not sustainable then the architect doesn't get to have the fun part, all the creative designing sort of stuff, because he's broke.

MR BEGG: I think it has been said by some famous architect that 5 per cent of architecture is design. The rest is nitty-gritty. I would go so far as to say that 5 per cent of graduate architects are capable of design, possibly even less, and the rest are really average performers who are doing the nitty-gritty. The nitty-gritty is very important. It's not something you would despise but the educational process tends to educate architects to be part of that elite 5 per cent - wrongly, because they rapidly become disillusioned, and their whole attitude to architecture is likely to become cynical, and I think we have seen a lot of that in the last decade or two. We have seen, you know, very poor remuneration levels for architects; some of the lowest of any profession, partly because architects are ill-equipped to perform the role in society which they're inevitably going to perform.

DR BYRON: I think that's a very telling point that I hadn't actually thought of before but it relates to - it helps a lot of the other evidence that we have been receiving, sort of fall into place. When I studied law at the University of British Columbia in Vancouver and somebody made a comment to me there, when he found out that that's what I was doing, they're notorious for producing - they're trying to produce thoroughbred, you know, sort of gold cup winners and what the market actually needs is really good sort of hacks or stock horses.

PROF SLOAN: Draft horses?

DR BYRON: Draft horses would have been more useful, but I mean, they have got this incredible vision of the sort of super elite one and they're trying to force everybody towards that mould but what the real world actually needs is something that's less glamorous but far more functional perhaps.

MR BEGG: I must move on because I have got a number of points I want to make.

PROF SLOAN: Yes, do.

MR BEGG: When I was practice director for the Victorian chapter of the Institute and I had that role for six years, I received around 20 calls a day, either from the public or from architects with problems, so I rapidly became something of an expert, and in fact, over three years I recorded under about eight categories the nature of the complaint against the obvious things. It was very interesting. The institute still has that information, I don't, I am no longer with the institute, but it would help you I think - - -

PROF SLOAN: It might do, yes.

MR BEGG: - - - in determining where the consumer is dissatisfied.

PROF SLOAN: Yes.

MR BEGG: As a result of that I conducted mediations and I was conducting, towards the latter part of my tenure, at least a mediation a week between a client and an architect, and in most cases managed to get the project back on the rails so that it could at least be finished and not end up in the law courts. Without going into a lot of the detail because I won't have time, the overwhelming nature of the complaints revolve around contract administration. That is, I think, one of the key skills these 95 per cent of architects need because if they're going to be in sole practice they need to know how to manage their client's money, and it's not an easy thing to do. It's a big responsibility.

As you said earlier, there is a trust between the architect and the client and that trust, if it's misplaced, is going to cost the client a lot of money even before we get to the building stage of the project. There will be architect's fees, engineering fees,

delay, a whole lot of issues will come up if an architect's project in fact can't be built for the estimate of cost, and that's the most common complaint, is bad estimating. Ways around that of course are to improve the skills of architects, to improve their reporting capability, to make them go through the logical stages of a project, and to appreciate the need and the liability for being sued, if they don't keep the client informed of costs. There are difficult clients and they need to be skilled enough in psychology to identify categories of clients and report to the client accordingly, and that seldom happens, so it's a criticism of present courses. It's also a caution about accreditation because the courses do not cover professional practice adequately.

I have lectured in professional practice at Melbourne University and I found it very difficult to get one or two points per half hour across successfully to the final year students, whereas that same student a year later in their two years' practical experience, was only too keen to argue the fine points of those two points and to come to some understanding about their responsibilities and duties. This brings me to, Prof Sloan, your point, why can't a graduate call themselves an architect?

PROF SLOAN: Yes.

MR BEGG: I think most architects will tell you that a graduate, unless they have had an unusual pathway through the course and have had a degree of exposure within a firm, will not have an adequate understanding of the issues in professional practice that they need to be aware of in order to successfully complete a project for a client. But after a couple of years in an office they're going to be only too well aware what the problems are. It's for that reason that graduates cannot call themselves architects until they pass this practice exam. We have had a proposal in the Victorian Registration Board that they should call themselves architects from day one but that at the end of two years we call them a practising architect and give them a licence to practise. I think that would be a preferable way, a pathway, because we then have them under our control, if you like, as registered with the registration board so that we can monitor their performance and discipline them if they do things that are inappropriate before they practise.

DR BYRON: Would you say that we should actually think of this as a minimum seven-year process to produce an architect of which the first five approximately are conducted by the university and the subsequent two - - -

MR BEGG: Basically yes, but I am also going to make the point that there are many pathways to architecture. It is an applied profession. I have got no problem with a building practitioner who has, through the school of hard knocks and natural ability, got the ability to be an architect. I don't see why they shouldn't be called an architect if they want to. I have no problem with that at all.

DR BYRON: It's actually the old way it used to be before the 1920s.

MR BEGG: Yes, and there's no problem with that, and there will always be a pathway through the accreditation process of such a person being an architect, and I

don't think that will happen through the institute if they controlled the accreditation. I would be concerned about that, but it may well be that we'll have a proliferation of organisations of architects. One of them is that the potential for the big end of town to separate out from the small end of town because they have very different interests. That may be in the public good?

PROF SLOAN: No, I think we have found that.

MR BEGG: But I think it could be very, very dangerous for the community if that happened. This two year exposure period has been a preoccupation of mine and in the early 90s I got the Victorian Education Foundation to contribute \$280,000 to prepare a course partly for that and partly to help young practising architects to establish their practice. It has been called the Business and Practice of Architecture. It has been done as a distance learning course through Deakin University. It's a certified course and it points to a master's degree. It was aimed to encourage architects to continue education. The first course which is called the Delivery of Architectural Services essentially covers all the areas of architecture, the professional practice of architecture, in those two years, and the thoughts were that no matter where an architect lands they're not going to get experience over the whole of the practice.

PROF SLOAN: No.

MR BEGG: So that they're going to need to have some theoretical base as well as some real experience base. I would like to leave this course with you. I do need my copy back because I haven't got another copy.

PROF SLOAN: No, that's fine.

MR BEGG: It takes one project as a hypothetical school. We designed the course so that this school suffered every catastrophe that it could have and the poor students have to write the appropriate letters, do reports to the client, and at the end of the year, they have to sit a three-hour closed book exam based on the course. Over the eight or nine years that this course has been running there has been a very high correlation between - in fact, there has been 100 per cent correlation between those who passed the practice exam at the registration board and those who have passed the course.

PROF SLOAN: Right.

MR BEGG: It tends to be that the course has attracted the better performers so there's a high proportion of honours students in the course as compared with the practice exam. The Victorian Registration Board, up until this year, granted students an exemption from one of the two-hour studies and there was a financial benefit to the students who passed this course but because AACA has tried to produce a national course and because of bickering within the institute, particularly a very negative attitude in New South Wales to the BPA course - - -

PROF SLOAN: A bit of state rivalry.

MR BEGG: - - - we have not been able to achieve that recognition.

DR BYRON: So the AACA doesn't recognise - - -

MR BEGG: They don't like it, no. They say, "This is good undergraduate material." Well, I don't think they could have been - I don't want to knock any other group but this course couldn't be dealt with by an undergraduate. It takes seven hours a week which is more than is devoted to professional practice at the university and it requires a far greater access to real life experience to pass the course.

DR BYRON: It's actually on a different level to sort of undergraduate - - -

MR BEGG: No, I think professional practice is iterative. There is a basic understanding at the undergraduate level. This takes you to the next step and if we're talking about competency standards it takes you to the standard but I would say that you could run a simple architectural project. At a next level of iteration we might have a specialist architect dealing with, let's say, a big project or a special method of delivery, say, novation or - - -

DR BYRON: I understand.

MR BEGG: - - - all sorts of different contractual mechanism which might be appropriate for some particular project, but this will at least get an architect up to competence in an ordinary lump sum contract project with one builder and a number of consultants and going through, and I would be confident it would do that. If they can't pass it I would be confident also they ought not to be in practice. The second course which has been less successful is about the management of architectural services. It's about the young practitioner who wants to establish their own office. It's about business management, about project management, and other specialist things. I would like to sort of rush through it because I don't want to be cut off.

PROF SLOAN: That would be fine. Can I just make the point that if you've got the time to perhaps put in some of your notes in a submission then that would be helpful to us.

MR BEGG: Yes, I certainly will. The Building Act of Victoria doesn't deal with contract administration. In my mind it's one of the big weaknesses of the act. A lot has been said about the Building Act here and I think a lot of half-truths and semi-truths have been put forward. People don't really understand it as they should, even the administrators of the act. Architects are building practitioners, they are deemed to be building practitioners, and they are required to be a building practitioner in order to practice and in order to practice they must have professional indemnity insurance.

There isn't any likelihood of uninsured architects getting out to the public unless

they only offer design services and that's not controlled. As soon as we get into contract administration it is controlled. In fact, most architectural draftspeople don't get involved in contract administration. It's the Building Practitioners Society that gets involved in the same range of services as architects and we had discussions with them a number of years ago, that we would use a BPA course as a mechanism to assess the standard of architects and building design practitioners for the role of contract administration.

Two years ago the Victorian chapter of the RAIA had reached agreement with the Building Control Commission to have architects brought fully under the act and the draft legislation was prepared but unfortunately the national arm of the institute because of policy issues decided that wasn't appropriate and the draft legislation was never enacted. It is not in fact a very difficult procedure to write architects fully into the Building Control Act and still retain the Architects Act as the mechanism of accreditation. I would like finally to turn to the differences between engineers and architects, because I think it's a key point there, because they have been used as an analogy of what may happen to architects.

One of the essential elements of an engineer's training is the design of safe beams and columns, safe structures. An engineer in this health and safety area of building stability has to have those skills and has to fully understand the calculation process as an undergraduate. It's an essential part of the course and because the engineering body - I've forgotten its name - the association of engineers or whatever it is.

PROF SLOAN: Institution of Engineers.

MR BEGG: The Institution of Engineers has been in existence for a long, long time. It more or less has a monopoly. There is not going to be competitive institutions establishing themselves through a deregulation process. They are quite competent to ensure that engineers have these skills in the accreditation process. Architecture is a much more diverse and more difficult course to determine what competencies you really need. I know that there are some schools of architecture which work on the assumption that professional practice is not an essential undergraduate skill, that that will be gained later.

I think that we need to be very careful before we use that analogy because we may well - with engineers, because we may well have a situation where we have architects being accredited who don't have those essential project contract management skills that are necessary to protect the client, but they may be called architects and they may have an architecture degree and be out in the public and doing damage before their reputation gets ahead of them. There was also a comment that the registration board here doesn't successfully prosecute complaints. I think if you talk to any experienced architect you will find that there are four well known names who we would all like to get rid of in the profession. There are many others who I think we would be better off without but four well known names who everyone knows are rogues.

We've got rid of one of them for three years; we deregistered him, and he's due to come back on board this year, unfortunately, but that was the best we could do. It's not true that the Victorian Registration Board isn't prosecuting. We have 26 or more disapproving actions running at the moment. We have grave financial problems because of the prosecutions that we're running and the tough attitude we're taking. I was elected to the board as the architects' representative on a platform that we needed to take stronger disciplinary action and since I've been there the disciplinary procedures have almost overtaken the role of all other aspects of the board's role. I'm not sorry about that.

So I challenge comments round here that the board hasn't been effective. It certainly went to the Building Control Commission to seek investigators because we're finding that the costs of the way we've been running disciplinary procedures are very high both for the litigants and for the board and we were looking for more cost effective ways of getting to a conclusion which complies with the rules of natural justice which we're bound by. I think I've covered everything, thank you.

PROF SLOAN: Okay, Andrew. Look, that's absolutely excellent. You must be feeling a bit whacked by now so - - -

MR BEGG: I am, yes.

PROF SLOAN: Well done and well done because you've been here all day. Thank you very much for coming in and when you've recovered a bit more perhaps if you could present us with some of those notes, that would be good. Thanks very much indeed. I now call to an end the public hearings of the review of legislation regulating the architectural profession on 22 June 2000 in Melbourne. Thank you all for your attendance.

AT 6.08 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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