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Adelaide	(08) 8212-3699
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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 SYDNEY ON TUESDAY, 13 JUNE 2000, AT 9.30 AM

Continued from 9/6/00 in Brisbane

PROF SLOAN: This is I think our fourth day of public hearings into the review of legislation regulating the architectural profession. Today is Tuesday, 13 June 2000, and we're in Sydney. Welcome, everyone. My name is Prof Judith Sloan and I am one of the commissioners of the Productivity Commission and on my left is Dr Neil Byron who is also one of the commissioners of the Productivity Commission.

For those of you who are unaware of the role of the Productivity Commission, the Productivity Commission is a federal government agency and I think it's best described as being the principal micro-economic reform advisory agency, and I stress that we are only an advisory agency. We don't make binding recommendations or regulations. As you would all know, this inquiry into the legislation regulating the architectural profession arises out of National Competition Policy and under National Competition Policy it is a requirement of all governments - state, territory and federal - to examine all pieces of legislation which have potentially anticompetitive elements.

The precise background to this review is a little unclear because, as you would know, most state and territory governments were in the process or had completed the process of reviewing their Architects Acts, but a decision was made to aggregate that process and the Productivity Commission was given the job of undertaking that review. It is worth stressing - and for those of you who follow this in great detail one might compare this with the report of the Trade Practices Commission 1992 when they looked at the architectural profession - that the terms of National Competition Policy, or particularly the Competition Policy Agreement, are slightly different and that there is what you would call a reverse onus of proof.

So in these kinds of reviews those who wish to have these kinds of statutes continue must demonstrate that the community benefits outweigh the community costs and that there is not an alternative means, non-competitive means, of achieving those same objectives. So it's a slightly different question than was asked in 1992 and therefore a slightly harder trick to take, as a matter of fact. As I said, this is - is this only our fourth day? We seem to have been doing this all our lives.

DR BYRON: Yes.

PROF SLOAN: Can I just make a couple of observations that are quite useful.

This review is not about the role of architecture or really even the role of architects. It's really much more specifically about what the Architects Acts do and the extent to which they generate benefits and the extent to which they generate costs. So we've had an awful lot of discussion and there's a lot of discussion in the submissions about the place of architecture in a broad context; by and large I'm not sure that kind of discussion gets us very far.

A second related point is that I'm not sure that dumping on architects' competitors either gets us very far. So we've really had too much about, how shall I say it, the evils of building designers taking on the world and I think that's not very helpful at all. Again, we need to keep the focus on where the Architects Acts fit in to an appropriate regulatory landscape.

Finally, and maybe because I've got a thicker skin than you, Neil, not that we're delicate petals at all, again there seems to have been a tendency in some of the public hearings to attack the commission. Now, I personally am not going to get too worked up about that, but again I don't think that gets us very far. We have been appointed by the governor-general to undertake this job and we're doing it to the best of our ability, so I think the kind of comments, some of the comments that we've had in some of the hearings, are not very helpful.

Apart from that we try and keep these hearings as informal as possible and by and large allow the participants to make some points and then we have a series of questions and answers. The only other ground rule is that we really can't take any interjections or comments from the audience. The whole proceedings are placed on transcript and therefore it becomes very muddled if we have comments from the audience. If you think during the day that you might really want to say something we probably could accommodate that. Okay, well, if we could have our first participant representing the Building Designers Association. Are you Barrie Wright?

MR WRIGHT: I am.

PROF SLOAN: Hello, Barrie. If you could just state your name and organisation for the purpose of transcript, that would be great.

MR WRIGHT: My name is Barrie Wright. I am the chief executive officer of the Building Designers Association of Australia. I introduce my colleague, Mr Mike Alexander, who is national president of the Building Designers Association.

PROF SLOAN: Welcome and thank you very much for coming. What I suggest we do is if you'd like to perhaps speak to your submission and then we can open that up for some questions.

MR WRIGHT: Thank you. We made a submission and we made a submission to this hearing, of which you no doubt have a copy. I think probably it would be helpful just to refocus on just who the Building Designers Association are. Firstly at the outset let me commend the report; we're not one of the ones that are here to pin the

ears of the commissioners back. I personally felt the report was very balanced, very objective, and some of the criticisms they put in some of our recommendations we take to heart. However, we do commend the commission on its report in its recommendation to repeal the various acts as a bottom liner.

About the Building Designers Association, some have felt that this is a recent event in Australia; in fact, the Building Designers Association had its start some 40 years ago in South Australia where a group of building designers came together and as of today they have grown to a national organisation. This association represents seven independent associations, each one quite independent in state and territory, so we are in a sense a federation. We represent some 1300 building designers throughout Australia - that includes designers, specifiers and coordinators of practices involved in a wide range of building activities. These are what the commission has termed the non-architects. These are non-architect practitioners who typically own their own small to medium-size practice and who employ architectural technologists, draftspersons, engineers in some cases, and architects in some cases, or certainly those with BArch qualifications. In terms - - -

PROF SLOAN: Can I just - - -

MR WRIGHT: Yes, sure.

PROF SLOAN: We've heard a bit about the background of building designers. Am I right to say that it's sort of many and varied, that they come up through various routes?

MR WRIGHT: I think the definition and the approach that the commission took to defining the market was pretty accurate. Our association represents probably 25 to 30 per cent of that 5 and a half thousand that the commission estimated who choose to label themselves as building designers as well as those that label themselves quantity surveyors, draftspeople, builders and so on, but who essentially provide building design services and related services as part of what they do.

PROF SLOAN: So some have architecture degrees, some have come through - - -

MR WRIGHT: The minority have BArch degrees.

PROF SLOAN: Some have come through architectural drafting, some have come through building.

MR WRIGHT: The vast majority have TAFE qualifications, have a two-year diploma of architectural technology; typically that's the qualification that they hold, depending upon the state. It varies in nomenclature state by state, but in New South Wales it's a diploma of architectural technology.

PROF SLOAN: But is it not true that some may have been builders or - - -

MR WRIGHT: Yes, some indeed have a multifaceted practice; some choose to embark upon building; some choose to provide consulting services in the broad spectrum and some choose to exclusively focus on nothing but building design. That was by way of introduction.

Our submission is quite brief I guess and that is that in focusing along with our colleagues, the architects - and we certainly consider them colleagues; in fact right at the moment we're working with the RAIA in discussions on competency standards, so we certainly look to the future rather than to the past. My background incidentally is I'm not a building designer, I'm a management strategist from other places, so I come with no cultural baggage on either side, but I do recognise that this is a difficult area for both sides and one probably grouped out of history rather than anything else and it's an area that other professions have addressed: accountancy; solicitors have all reached compromises, Solicitors Admission Boards and LLBs and things like that. They have come to realise that competition can coexist.

However, having said that, we look upon the acts as being anticompetitive. Certainly our members see the acts as anticompetitive inasmuch as it lessens competition in the marketplace. It affects our members I think in three areas marketing restrictions, access to government work and entry to various design competitions.

In our submission we related to a regulatory model for the future and there may be a little bit of confusion in terms of how we coin that regulation. We chose a coregulation model; I notice the commission took issue with that. The coregulation model from our point of view was one of recognising political reality and coregulation inasmuch as there are in existence now two state laws - Queensland and Victoria - and most of the other states are rumoured to be quite close to considering similar state laws. Given the political reality of that, this association believes that it's unlikely that states would cede their legislative interests in this regard to the Commonwealth and as such, faced with state laws, we support strongly the idea of self-regulation bolstered up by statutory support under some sort of harmonious state laws covering building practices.

PROF SLOAN: So basically, which as we understand was the conclusion of the review in Victoria, the Architects Act should be repealed and the architect should become part of the list of building practitioners within the Building Act.

MR WRIGHT: If they so choose.

PROF SLOAN: Yes. Would that involve reservation of title though?

MR WRIGHT: This association - well, speaking on behalf of our members, 25 per cent of those in there - we don't believe our members covet the title "architect" at all. It is my own view that anybody with a BArch qualification should be entitled to use the word "architect". Anybody with a diploma of architectural technology should be able to use, in their marketing, the terms or the derivatives - architectural

services,

architectural design, architectural whatever.

PROF SLOAN: So in other words it probably doesn't involve reservation of title or as derivatives - your co-regulation model.

MR WRIGHT: Inasmuch as Trade Practices would clamp down on anybody purporting to be an architect, and not being an architect, I would suggest you're right.

PROF SLOAN: You've got your list of competent building practitioners within those building acts and, as we understand it in Queensland, the building designers are there already.

MR WRIGHT: Yes, and Victoria.

PROF SLOAN: Yes, so you would anticipate the architects going in - - -

MR WRIGHT: There are some small anomalies in those acts which I think from the micro-economic point of view have got to be tidied up, as they are in Queensland at this very moment. It's evolving and I'm not sure that we're ready to specifically state what the nature of the ideal act should be.

PROF SLOAN: But who's then responsible for accreditation, re-accreditation?

MR WRIGHT: I think the association should be. We, as an association, are evolving ourselves. I have to be frank with you. The national association virtually only started in February 85 - 95.

MR ALEXANDER: Yes, 93, actually.

MR WRIGHT: Thank you. In our discussions with the RAIA representatives we certainly are in tune with the fact that all this should be governed by competencies. We, I think, are very close to agreeing with the architects on competencies for AQF4 and 5 at a TAFE and we have plans in place now to write competencies standards for building designers all the way through to qualified, certified, chartered, what have you. There is a lot of work that we have in the pipeline to define what is a building designer.

PROF SLOAN: And levels of building designers?

MR WRIGHT: Levels of building designers. To be a member of our organisation you have to have minimum qualifications from an academic point of view, you have to have a minimum of three years working experience and you have to, in almost every case, be an employer and owner of your own practice and be successful.

PROF SLOAN: There are different models. For example, we heard from the Building Surveyors and Allied Professions Accreditation Council, which is - - -

MR WRIGHT: BSA.

PROF SLOAN: - - - funnily enough, something that's come out of Adelaide.

MR WRIGHT: Right.

PROF SLOAN: That's a case where the accreditation process has essentially been - - -

MR WRIGHT: Centralised.

PROF SLOAN: Well, centralised, but the association then has, in a sense, contracted it out because they see that independence is quite useful.

MR WRIGHT: With respect, they've contracted it out to their own organisation. I mean, DIAS is a legal entity but nevertheless part of - - -

PROF SLOAN: Yes.

MR WRIGHT: I think that - - -

PROF SLOAN: But is that the kind of model - - -

MR WRIGHT: It's the kind of model we're working on, the same as the Institute of Project Management in New South Wales have got an excellent model. I think there are a number of models. Whether or not it should be centralised, my own view is that provided the association can afford it, it is better for an association to manage its own self-regulation, if you will, inasmuch as they know best and what's best for the membership and indeed for the consumer.

MR ALEXANDER: Given that, though, I think we agree that it should be a transparent assessment system, and open.

PROF SLOAN: But not a statutory system like the architects have with a government board itself.

MR WRIGHT: I would view that there's no need to.

PROF SLOAN: No.

MR WRIGHT: If people are judging people based on their competencies, I think it's up to the individual to get out there and establish what his competencies are. Indeed, it's a user-pay principle.

PROF SLOAN: So your model is probably more self-regulation than co-regulation though. I mean, the co-regulation is saying - - -

MR WRIGHT: Yes, it's 90 per cent self-regulation with a 10 per cent political reality imperative in there, saying that the state laws are going to be there and we're going to have to somehow or other work with those, so that's why we chose co-regulation as distinct from purely self-regulation. But we think self-regulation without those statutory props of the state building practitioners acts wouldn't be as efficient.

PROF SLOAN: Certainly I'm rather keen on - we've heard often, by chance, about some of these marketing restrictions, so you've got an example - we heard of one in South Australia which - I mean, just because - I'm sure the person who drafted this act - but in the Liquor Licensing Act it says that all renovations to hotels must be undertaken by an architect.

MR WRIGHT: Yes.

PROF SLOAN: Now, probably the person who drafted that legislation didn't realise that the term "architect" has a legal meaning, and therefore you've set up - now, we would never have known about that unless they told us, actually.

MR ALEXANDER: That is the nub of the issue. People who draft up local council DCPs and so on do it with the very best of intentions, in that they're looking for good design, if you like, and the term "architect" is the only term they know, and they understand that to mean somebody who's trained in building design.

PROF SLOAN: Yes, and similarly with the derivatives.

MR ALEXANDER: Yes, that's right.

PROF SLOAN: You know, they call for tenders for architectural services - - -

MR ALEXANDER: That's right, they are not aware - - -

PROF SLOAN: - - - without realising that actually is that - - -

MR ALEXANDER: It's restricted.

PROF SLOAN: It's a legal term.

MR ALEXANDER: That's correct.

MR WRIGHT: I think there's a change. There's an example, which I quote here. The Willoughby City Council, who placed an advertisement for tenders - brief for architectural services, which is exactly the point you're making.

PROF SLOAN: Yes.

MR WRIGHT: But on a legal technicality - quite reasonably so - our members could not purport to tender for that since they are not under the act permitted to provide architectural services, which to me - given the fact that they hold qualifications in architectural technology - is a nonsense.

PROF SLOAN: Is that a common complaint coming from your members?

MR WRIGHT: Universal.

PROF SLOAN: Right.

MR WRIGHT: In the restrictions of government work I think - I point out in my submission that it seems to be most prevalent in the metropolitan area, slightly less - which we find, which we agree with the commission - that's probably due to the characteristics of regional areas and the efficiency of networking in regional areas more so than in city areas. But the pre-qualification lists of consultants exist, either deliberately or non-deliberately, and as a result of that our membership, where they have obvious competencies - and we're not talking about every one of our members; I'm saying for those that have the obvious competencies they get a small minority of government-sponsored work.

PROF SLOAN: So is that situation - I mean, do you think that's improving in the sense that - - -

MR WRIGHT: No, I wouldn't say so.

MR ALEXANDER: No, I would say it's becoming more of a problem to us, not less.

PROF SLOAN: Right.

MR WRIGHT: The reverse of that, of course, is where the market forces - when the market is free to act - again, our membership and others who call themselves building designers hold something in excess of 75 per cent of the market, where the market consumer has been free to make the choice, and that is in the residential market.

PROF SLOAN: It's just I remember hearing in Western Australia that the government department we spoke to were increasingly allowing small-value projects - child care centres and the like - open to building designers where previously it had been - - -

MR WRIGHT: Yes, we have anecdotal information that some of our members have got established networks and do get some work in the smaller area end of it. However, it is the minority.

MR ALEXANDER: We have spoken to the Department of Public Works here in New South Wales and it was established that perhaps - and the example was a police station in Bourke, which is strictly residential construction. It still would be restricted to architects only because that's the only qualification or competency that they recognise in New South Wales.

PROF SLOAN: That's how we do characterise the market, as the government market being more favourable, should I put it, to architects than perhaps some of the others.

MR ALEXANDER: That's correct.

MR WRIGHT: Yes. Just to finish off on that point of the - and I want to stress that I think architects have got this fear that people are going to usurp the title, which I think is a most unnecessary fear because our people do not necessarily want that title, plus they have bigger problems inasmuch as the term "architect" - I notice in last week's Sydney Morning Herald one of the coup leaders in the Solomon Islands is described as an architect there. It says, "Coup architect quits over" - whatever - but, I mean, used in another sense. That wasn't meant to be a cheap shot there but it just points out the fact that in the English language you must be very careful. The term is used quite extensively both in the computer business and in other contexts.

PROF SLOAN: That's right. My husband wrote his PhD thesis on the micro-vascular architecture of the fallopian tube of the rat; pretty gripping stuff.

MR WRIGHT: Had good taste, did he?

PROF SLOAN: It had the term "architecture" in there.

MR WRIGHT: I see, and that was pre-qualification for your appointment?

PROF SLOAN: I now realise he probably used it illegally.

MR WRIGHT: I think another example in New South Wales is the Olympic village, or certainly the athletes' village, which is virtually 100 per cent residential in character and none of our members were in a position to even tender on that. Our viewpoint on that is in reality we believe that, given more competition, I think the public sector's costs in this area would necessarily go down. That's the point we're making, rather than looking for support.

PROF SLOAN: In, say, a second-best world where the term "architect" were reserved, would it still be a plus if the derivatives were then liberated, so to speak?

MR WRIGHT: Sorry?

PROF SLOAN: Like in Britain - - -

MR ALEXANDER: Yes. Yes is the answer.

PROF SLOAN: - - - the title "architect" is reserved but none of the derivatives are regulated, which is quite interesting.

MR WRIGHT: In where?

PROF SLOAN: In Britain.

MR WRIGHT: Yes, true.

PROF SLOAN: Yes, so - - -

MR WRIGHT: And there has never been - - -

PROF SLOAN: I mean, I'm just thinking, in a second-best world for you would it - - -

MR ALEXANDER: It would make life a lot easier for us if - - -

PROF SLOAN: Liberating the derivative, yes.

MR ALEXANDER: - - - if for instance, in my practice, I could say on my advertising and literature that I provide architectural services, which is what I do, but I'm not permitted to do so under the current law.

PROF SLOAN: Right. So your point is that someone who held themselves out to be an architect - I mean, that would be a violation of the Trade Practices Act.

MR WRIGHT: Absolutely.

PROF SLOAN: But you're not telling an untruth by saying you're providing architectural services - - -

MR ALEXANDER: That's correct.

PROF SLOAN: - - - in your opinion.

MR ALEXANDER: That's correct.

PROF SLOAN: So that would be a step forward. Sorry, I'm interrupting you a lot, Barrie.

MR WRIGHT: No, that's okay. The commission also sought some further information on the degree to which the registration requirements of the architects ensures knowledge of the structural aspects of construction. We put the view that the

architects courses give only rudimentary overviews on structural design. Accredited structural and civil engineers are there for that purpose, and architects and building designers all use their services regularly to certify the structural competencies, so there is no difference essentially in terms of the knowledge of structural aspects.

DR BYRON: But one of the other things that's been put to us is that architects by their training and experience cover an incredibly wide sweep of activity, whereas building designers tend to only do the design and frequently, we're told, just the drafting work - preparing the plans. But do your members also do documentation and supervision of works and those sorts of things?

MR ALEXANDER: Yes, we do. It varies a lot right across the spectrum but certainly the top 15 or 20 per cent of our members would provide a full range of architectural services, which probably goes right through to supervision, project management and that sort of thing. That wouldn't be all of our members, but certainly an appreciable percentage - 10 to 20 per cent.

MR WRIGHT: And I think that's the significance of our thrust and our initiative on competencies for building designers. In discussions with the RAIA they regularly say, "Who is a building designer?" or, "What is a building designer?" I think that, given that they have got competency standards out there and we haven't got published competency standards, it's up to us - and we accept that criticism - that we have to clearly point out what a building designer is and what their competencies are, and that indeed, as with architects, there are different levels of skill in different sectors of the business. In other words, an architect that, for argument's sake, does regular "alts" and additions, wouldn't consider himself appropriate for a 42-storey multi-residential building. Equally, a building designer would also have the same issues.

DR BYRON: But just elaborating on that and coming back to mention of the Olympic Village, the RAIA in its submission to us points out that it was architects who came up with concepts like passive solar design. Do any of your members do that sort of thing? Do your members also have experience in energy efficiency, because that's also one of the points made in a number of the submissions; that architects have a particular expertise when it comes to ecologically sustainable developments?

MR ALEXANDER: I would have thought that the BTA, if anything, were stronger in that regard. We've got some very focused excellent people working in the ESD field. We've currently got a small group nationally running on the ESD. Do you want to speak more on that, Barrie?

MR WRIGHT: I would agree with that. Our relationship is with New South Wales, with CEDA - I think you should ask them. I think we probably pioneered the work with CEDA and our colleagues came in after that. The logic behind that is that we were looking for areas of expertise that we were able to participate in, given the circumstances, so I would have to say on an equal footing basis - solar energy,

passive energy. We're working with Australian Greenhouse right now and very close to

probably being given some work by Australian Greenhouse in this very area as an association, so if our credentials aren't there then somebody is misreading the signs.

DR BYRON: Thank you.

PROF SLOAN: It's interesting you talk about competency standards. It seems to me that we have had an enormous range of views as to what architects actually do, to tell you the truth, including from art to what almost sounds like structural engineering. It probably would clarify things quite a bit actually - - -

MR WRIGHT: As a marketing person let me say that in today's environment, unless you are specialising in some area of work, you are probably not going to make a living. So whether you are an architect, an accountant, a lawyer or, indeed, a productivity commissioner, if I may say, unless you decide to specialise in a particular area you're not going to have the expertise required to be competitive, so my view is I think you can no longer generalise, or shouldn't. It's dangerous.

PROF SLOAN: Yes.

DR BYRON: Do your members advertise their specialisms in terms of commercial - - -

MR WRIGHT: Define "advertising", Dr Byron. Do you mean to say do they have business cards in which they put specifics? Yes, some of our members are ESD specialists and they have titles in their company like Eco something or other, Suntek, so to the extent that they advertise, yes.

DR BYRON: As you are aware, in our report we spend a lot of time looking at the sort of information flows to consumers and prospective clients and it seems to me that a system of registration that merely certifies that a person once met minimum standards of competency or qualifications, adequacy, but doesn't say anything about that person's recent experience or particular specialisation, whether they are in design, documentation or project management or whether they are in high rise or low rise or whatever, is very poor in the sense of the amount of information it transmits to prospective clients. What I am getting at is, does your co-regulation, self-regulation type of model for your association transmit more information than simply, you know, "This person meets sort of minimum requirements in building design"?

MR WRIGHT: The model will be similar to many of the other association models inasmuch as as one's competency in whatever area you have increases then so does your standing in the pen pecking order, so you would expect a charter member of BDAA, when it does exist, to be a highly competent, highly experienced person. If you are asking me the question, would we then have subdivisions, charter member eco, charter member residential, charter member - we haven't got that far but I suspect not. I think it is up to the consumer in the final analysis to - we can recommend. We can say, "Here is a list of people in our organisation who do exclusively ESD work." We then recommend, "You go and talk to those people."

Look at their work. Look at

their references and choose accordingly."

MR ALEXANDER: I would just like to pick up there on the fact that the BDA promotes continuing professional development and in fact in New South Wales it is compulsory for full membership and chartered membership, so it picks up your point of somebody being qualified some years ago. We work hard on maintaining those people up to date.

PROF SLOAN: How do consumers access particular building designers then?

MR WRIGHT: Obviously the most prevalent way is word of mouth.

MR ALEXANDER: Word of mouth.

MR WRIGHT: As in a lot of areas. We have a national Web site. We have about 10 other Web sites either state-based or even regionally-based. The Blue Mountains has one.

PROF SLOAN: So would people ring up your association?

MR WRIGHT: They ring up and we have a chain of command that a person with - our organisation is highly volunteer based - we're not a well-resourced organisation - so within, for argument's sake, New South Wales, we would have a person whose job it is to take that call and, under specific directions, give six or seven alternate suggestions and then it is up to the consumer to pick that up. There are search engines on the Sydney-based Web site, for instance, where they can actually search by postcode for a designer and I think there are a lot more embellishments to that. I have to admit that this whole area of competency in our case is embryonic.

PROF SLOAN: We heard from a very happy consumer of architectural services in Queensland.

MR WRIGHT: Architectural services?

PROF SLOAN: Yes, but how she had found her architect was through the RAIA, not through the board. I mean, she needed something very specific and that was quite useful.

MR WRIGHT: My own view is I think the association has to be very careful when representing all members that it doesn't put itself in a position of recommending any one.

PROF SLOAN: No, I think that is absolutely right. Would you like to talk a little bit about the restriction on entry to design competitions?

MR WRIGHT: It's a very quick point, I suppose, and it is an obvious one in the sense that most architectural competitions are sponsored by government authorities in

some form or another and, again, they tend to be restricted to architects. Our point is - and we're picking a recent example of Wagga Wagga council - a competition for a new civic building. If the point of a competition is to judge the best design, the most appropriate design, it should make no difference who enters, I would have thought. If it is purely based on competency and end product - I mean, why restrict the field?

DR BYRON: I guess one could also argue that whoever is holding the competition can set whatever rules they like: that, you know, only left-handed, blue-eyed people - - -

MR WRIGHT: With one exception, doctor, that they are using taxpayers' money and I think to some degree one has to be careful that if it is the job of the bureaucrat to get the most efficient utilisation of that money and if there is one system in place to the left-hand side that says this is either (a) give you suboptimal result in terms of a competition or (b) increase your costs for some reason or other, then I think there is a theoretical argument at least that the free market would do it better.

DR BYRON: That comes back to the point we were discussing before. Do you think that the Wagga Wagga case was deliberate or accidental in the sense that they may have assumed that it was open to everybody who was competent of doing that job? They didn't realise they were discriminating. I don't know.

MR WRIGHT: It's hypothetical but can I answer that in another way? The recent forum by Bob Carr in New South Wales on improving residential unit design: I think there is a clear case there of what you say, in that when we went to the workshop it was assumed that appropriate people should only be used to design those places and the going-in position was architects; the going-out position was architects and other accredited building designers, and I think the point you are making is that when they recognise that Francis Greenway and Burley Griffin and a few other notable people, well-known designers, were not architects, one has to say there are other people out there who can in fact design and document and specify and do all those things that architects do, so they should be included.

DR BYRON: Yes, well, that comes back to the semantic point about the word "architect" has a very narrow, strict legal meaning and it also has a very wide general common usage meaning and it is often very difficult to keep them separate.

MR ALEXANDER: That is precisely the problem we come up against on a daily basis and an example may be the little old lady down the street comes into my office and she says, "Oh, sonny, are you the architect?" and I have to say, "No, I'm sorry. I'm not an architect." "Oh, I'm sorry. I'm confused. I'm in the wrong office," and nothing I can say after that will settle the little old lady down and get her to understand the difference and the very fact that the term "architecture" is restricted in the way it is is creating considerable confusion out there.

MR WRIGHT: The same sort of confusion exists with your own title, doctor. I mean, how many people come to you with their problems with their prostate and you

say, "Look, I'm not quite that sort of doctor."

DR BYRON: "Take two Panadol and you'll be right."

PROF SLOAN: There is confusion. Interestingly, people don't realise this, but in the medical profession the term "doctor" is just a courtesy title. It has absolutely no legal standing at all.

MR WRIGHT: Yes, but nevertheless - - -

PROF SLOAN: Whereas Neil is actually allowed to call himself a doctor because he is a real doctor. Maybe not for prostate cancer.

MR WRIGHT: And the reverse in the medical profession. As you get higher up you actually become a mister.

PROF SLOAN: Yes, if you are a surgeon. It's an interesting point. One of the arguments that was put to us is that if reservation of title of architect were eliminated it would add greatly to confusion but what you are saying is that it is quite confused out there at the moment.

MR ALEXANDER: It's confused out there at the moment.

MR WRIGHT: I don't think it's confused. It's confusing. I think people understand what an architect does but they don't appreciate that in certain areas 75 per cent of all the work is not done by an architect - it's done by somebody else - so there is confusion there, but I still say - to reiterate - we respect and recommend that the term "architect" be reserved for those holding an equivalent of a BArch, not necessarily registered, but anyone who has an equivalent qualification of BArch should be entitled to "architect" and then after that their association should do what they wish with it, whether it is registration - - -

PROF SLOAN: That does look like a big anomaly to us; that there are people out - and really if you look at the numbers, quite considerable numbers - - -

MR WRIGHT: 50 per cent perhaps.

PROF SLOAN: - - - who hold bachelor of architecture that aren't registered architects and therefore find that they're - including a fellow we have come across who keeps on getting prosecuted for writing "Bachelor of Architecture" after his name, which is actually true - - -

MR WRIGHT: Yes. We have members, a minority, who are BArch who chose, for whatever reason, not to be registered - because their business interests were in other directions.

PROF SLOAN: Yes. I mean, you have got obviously a few of these who we have

also seen fall through the gap - those from overseas. It seems that a lot of overseas people find it very difficult to get registered as architects.

MR ALEXANDER: Yes, we have. There's a member we have who came from Germany. He tells me - and I haven't checked this - he is a qualified architect in Germany and it is recognised right across Europe but, for some reason, when he came to Australia the amount of restrictions on becoming registered was just too much. He came straight to Australia and started his own business. He has told me he has to go and work for an architect in Australia for two years before he can be considered to even sit for the exam. We have quite a number of stories like that.

PROF SLOAN: Right, so you end up being the home for that.

MR WRIGHT: That gentleman is in fact - if it is the same one I am thinking of - is extremely successful, currently, and doesn't see a need to now.

MR ALEXANDER: No, no.

MR WRIGHT: He is designing some very, very well-known buildings.

PROF SLOAN: Interstate?

MR WRIGHT: Beg your pardon?

PROF SLOAN: In New South Wales?

MR WRIGHT: In Sydney, yes.

MR ALEXANDER: In New South Wales - 10-storey home units. That type of work.

PROF SLOAN: Right.

DR BYRON: Just coming back to home units, and you mentioned the New South Wales premier's concern about the standards of some of the construction. Since I don't live here could you tell me anything about what proportion of those flats and so on that he found aesthetically unpleasant were designed by building designers as opposed to architects as opposed to somebody else or has that sort of information not been made available?

MR WRIGHT: No. I mean, depending on who you talk to there would be all sorts of points made but our anecdotal feeling is that the biggest causation of that problem is in probably the developers - in fact a budget restraint - and whether it is the architect or the building designer they are responding to a brief - in many cases a very tight brief - and, as such, they're delivering to their client, who is the developer, the product that he wants and says he can sell, so you have got to define who the client is. My own feeling is that there are as many good designs done by architects and

building

designers as there are bad, on both sides, and in fact one humorous part of that day was that the lord mayor of Parramatta actually was a keynote speaker and a week and a half later was quoted in the Parramatta Times, saying, "This particular building is the epitome of what I believe multi-residential buildings should be in my area and, fortunately for us, it was designed by a building designer." I think it's anecdotal. One can't say - one shouldn't say - that all good designs are done by one type and all bad by another, because I just don't think that's the market. That's not reality.

DR BYRON: But I guess the point that you made earlier there was the fee bidding, the intensity of competition that developers who are trying to spend the least possible amount of money on design may well end up cutting corners; a number of the submissions put to us that it's very much a false economy to go for the cheapest possible design, in that it may end up costing millions for the life of the building.

MR WRIGHT: My background is economics and I can say this is all cyclic inasmuch as immediately after the Second World War there was a huge market for small quick-prepared residences, whether they be flats or houses - the fibro, whatever, they were all established there. More recently, I think there's been a rather large demand for cheap accommodation, which has almost now been satisfied in the major metropolitan areas. Now larger developers, like Mirvac and others - and this is where the market forces come into play - they've suddenly realised that that market has now gone and the X generation have got to get out there. To get them, you've got to start providing quality. I mean quality inasmuch as nine foot six ceilings, tremendous inclusions, inner-city New York-type loft apartments, so I think this is a cyclic thing which is determined by the market and once the market stops and won't buy that sort of thing, you'll find the market will correct that. I'm sure architects, I'm sure building designers, would prefer to design excellence if left to their own devices, but then again - - -

PROF SLOAN: With no nasty budget constraints.

MR WRIGHT: Budget constraints may be an issue.

MR ALEXANDER: But I'd just like to make the point that certainly there is a pressure on fees out there. I don't think it's true to say that building designers are necessarily undercutting architects on fees, whatever. I know I've certainly been undercut in my practice by a number of architects consistently. I just can't do the work for the price they're quoting. The other point I think I need to make on multi-residential, it has a fundamental difference between all other types of development and that is it's developer-driven and price-driven, whereas almost every other type of development, there's somebody's ego in there, they want a good building. But with the developer the fundamental difference is his bank balance.

PROF SLOAN: I think that's very useful, Barrie and Mike. I don't know whether we've got any other points. Thanks for putting together that submission. We had your colleagues up in Queensland.

MR WRIGHT: I understand.

PROF SLOAN: They were very useful and thanks for coming today.

MR WRIGHT: Thanks very much.

PROF SLOAN: I now call the representatives of the Architects Board of New South Wales. If you could state your name and organisation for the purpose of transcript, it would be most appreciated.

MR CHAPMAN: Martyn Chapman, president of the Board of Architects of New South Wales.

MR O'CARRIGAN: Patrick O'Carrigan, member of the Board of Architects of New South Wales.

PROF SLOAN: Thanks very much. We've got your submissions and I presume you're going to speak mainly to number 431, are you, Martyn?

MR CHAPMAN: I don't know what number 431 is.

PROF SLOAN: Just see it from our point of view, how many submissions we've had to read. The response to the draft report.

MR O'CARRIGAN: The most recent submission.

PROF SLOAN: Yes.

MR CHAPMAN: Firstly, by way of background, for 25 years I was at the University of Technology, Sydney, as an academic in the field of professional practice, that is in the school of architecture and also as a practising architect, so I have a foot in both camps, if you like, academia and architecture. Firstly, I'd just like to say that we don't take much issue with the Building Designers Association. We believe that regulation of the title "architect" should only be in respect of building design documentation services. One should be able to use the title "architect" in relation to any other matter, like golf course architects or the architect of technology or whatever, so we're only concerned that the term "architect" be restricted in that sense. We have no quarrel with architectural technologists, those who have the qualification and believe that they should be able to offer architectural technology services.

In other words, services which properly describe their qualification and the same with architectural draftspersons, they should be able to offer architectural drafting services because that reflects the services of their qualification.

PROF SLOAN: So you've got no problem about them advertising that they're providers of architectural drafting?

MR CHAPMAN: That's right, none at all. In fact, our New South Wales act at present allows people who have a title "architectural draftsman" to use that title.

PROF SLOAN: The acts do vary a bit from state to state.

MR CHAPMAN: Sure. We're mainly concerned that the public know from the title

of the person what services they offer, so "architectural technologist" and so on.

PROF SLOAN: So "architect" is different, so you want the title "architect" reserved.

MR CHAPMAN: That's right .

PROF SLOAN: If someone were to hold themselves out as providing architectural services, would you then expect that person to be an architect?

MR CHAPMAN: Yes.

PROF SLOAN: A registered architect.

MR CHAPMAN: That's right.

PROF SLOAN: I use "architect" in the legal sense of the word.

MR CHAPMAN: Yes, that is correct. An architect provides architectural services, an architectural technologist provides architectural technology services and so on, so that's the main point. Certainly we agree with the commission that the present act as it is at the moment falls well short. The 1983 amendments even confuse things further by having architects and chartered architects. The public doesn't know the difference between the two, so that has led to a greater confusion, those two titles. The current thinking is there should just be one title and that is "architect" and that is a person who has had the five years' academic education qualifications, bachelor of architecture, and two years' practical experience in the field and we dwell on that two years, because universities nowadays cannot have students go on site because of insurance problems. That's one of the greatest difficulties that universities face now; they cannot give the practical side, the practical training, in their degrees.

PROF SLOAN: Although these rules in relation to registration have been pretty unchanged for many many years, as far as we could see.

MR CHAPMAN: Yes, they have. In fact, the board in New South Wales has been trying to have its act amended for a number of years. In fact, in 1994, there was a bill before the house which essentially followed the national legislative guidelines of the AACA and they contained the kind of criticisms that you've been highlighting in your report - professional indemnity insurance, for argument's sake, a requirement for the consumer protection - that it's all very well to say, "Well, the fair trading and so on can provide an avenue for restitution of damage suffered by architects," but if the architect is broke or has no insurance, there's no way - even if the architect is found guilty - can the consumer receive some compensation for the damage suffered. Professional indemnity insurance does that.

At the moment, it is voluntary and many architects do provide it, so the argument that that would be anticompetitive, if you like, exists because at present it's

voluntary and all architects providing those services, some with professional indemnity insurance, some without - so that is one consumer protection measure. Another one, I think raised by Dr Byron a little while ago, was that of continuing competence, if you like. Continuing professional development would also be a requirement in the national legislative guidelines.

PROF SLOAN: But would you imagine a statutory body to do all that?

MR CHAPMAN: I think the way to go about that is not the marking up of credit points and things like that, which I think is a nonsense, like attending at lecture, you get four points, even whether you're asleep in it or not. The way to go is - - -

PROF SLOAN: What did you just say?

DR BYRON: Even if you sleep through it. .

MR CHAPMAN: A Freudian slip. "To sleep through it," I should have said, perhaps. So we believe that is an area where the architect should self-certify that they have undertaken professional development relative to their practice over the previous 12 months.

PROF SLOAN: I'm just wondering whether - I mean, you heard the co-regulation model before. You have got the RAIA doing a whole lot of these things at the moment, including organising professional indemnity insurance, including between professional development. I mean, you're suggesting that the statutory body all of a sudden take this up as well? I mean, doesn't that sound inefficient?

MR CHAPMAN: No, not at all. What I'm suggesting is that the RAIA would probably be a provider, along with universities and other people, of continuing professional development programs. The RAIA - - -

PROF SLOAN: So it would be a condition of continued registration, would it?

MR CHAPMAN: It would be a condition of continued registration that they have PII in place, whether that's provided by the PII or other providers, but it would have to meet certain requirements under the Insurance Act, so any PII insurance would have to meet that. The board would not be policing this in the sense of providing the services and testing, just the same way under the Motor Traffic Act. The RTA doesn't go out and check up on people's licences every year. People are required to follow the Motor Traffic Act and if they breach it, that's a matter of prosecution, so the board would not in any way offer those services, but it would be a requirement of the act and it would be a responsibility of the board to see that architects who, say, have a practising certificate, hold professional indemnity insurance and undergo CPD.

PROF SLOAN: You're going to have to build up some kind of bureaucracy, otherwise the system won't be credible. I mean, if it's just based on people saying,

"Yes, you know, tick this. I've done that," why would that imbue any public

confidence at all?

MR O’CARRIGAN: There’s an annual process of paying and becoming registered.

PROF SLOAN: Sending in your small amount of money, yes.

MR O’CARRIGAN: No. Under the new act, which we believe essentially is there to bolster the consumer protection - that wasn’t envisaged in 1920, and that’s the precedence for the act that we have now.

MR CHAPMAN: If anyone falsely certifies - and I’m talking about certification, that they certify for reregistration that they do have professional indemnity insurance, that they do have continuing professional development or have undergone that - if they certify that and it’s falsely certified, then it’s a case of fraud, it’s a criminal activity, so it’s not just a matter of just saying, it’s a matter of certifying.

PROF SLOAN: But I would have thought you’d have to have some checks in place.

MR CHAPMAN: There would be spot checks, obviously.

PROF SLOAN: It seems to me - and I mean, I think in some ways your submission, as a small number of others admit, is that these acts do precious little at the moment. There’s really nothing to differentiate someone who got registered in 1956 and who has driven a taxi since and duly pays the money each year, with some complete high-flier who got registered in 1995 and is doing wonderful things. If we’re talking about information asymmetry, it’s really hard to see where the role of the board fit in at all.

MR O’CARRIGAN: I think you’ve identified the person who there may well be driving the taxi is not in fact practising as an architect.

PROF SLOAN: But they are legally allowed to call themselves an architect.

MR O’CARRIGAN: Yes, but having that title, earned or not, is not in itself a recognition within the community. There is consumer protection now, well established in all states. There is the act, flawed though it is at present, and there are the marketplace mechanisms.

PROF SLOAN: You see, economists are a completely unregulated profession and I don’t think - well, I know evidently - did you know there was some proposal at some stage to do some regulation? Anyhow, it got knocked on the head. You see, I don’t care if anyone calls themselves an economist. I really couldn’t give tuppence, because I know that I’m so much better than them that, you know, a small number of questions would reveal that the would-be economist can’t do anything. So I’m not quite sure why - I mean, you’re here, Martin, and you’re an architect too - why people get worked up about this.

MR CHAPMAN: It is really so that - - -

PROF SLOAN: And you've got people who really aren't architects, legally able to call themselves architects. Does that not worry you?

MR CHAPMAN: People who are architects who are not legally entitled?

PROF SLOAN: Who are legally architects but may have not practised for 30 years.

MR CHAPMAN: Well, it's rather the same as holding a driver's licence, isn't it. I mean, once you have a licence, and if you renew it, you - - -

PROF SLOAN: No, I think it's more like the quality of the car, actually, more than holding - driving a licence. You know, you actually do get checks on the roadworthiness of the car.

MR CHAPMAN: That's true.

PROF SLOAN: Whereas in fact - your system - you don't.

MR O'CARRIGAN: But I think we're here on a false premise if we suggest that the current system - - -

PROF SLOAN: Okay.

MR O'CARRIGAN: - - - is an ideal system. The primary premise that we have put in our further submission is, there is a fundamental omission on the part of your commission to examine forthcoming, future uniform legislation which is only one fact alongside consumer protection in the marketplace and all other regulatory mechanisms. Institutes of architects, BDAs, they are professional associations that look after the interests of their members. The fundamental premise that we have is that we administer and are limited to the act as it is written.

PROF SLOAN: Sure.

MR O'CARRIGAN: What we say is the act can be a lot better, and we believe that the Productivity Commission, if it gave due recognition to the attempts to get a uniform model legislation across Australia - that in itself would help the marketplace and future consumers of architect to understand what architectural services are and the people that provide them.

PROF SLOAN: Do you think so? I mean, as far as we - well, certainly at the moment people aren't even aware of the boards.

MR O'CARRIGAN: Well, with respect, the inquiries we receive suggest otherwise. People are aware of the board. They make two types of inquiries. One is,

is this person an architect, are they on the roll, and that's a simple yes/no answer.

PROF SLOAN: Yes.

MR O'CARRIGAN: What their practice circumstances are, how much they've practised, all those other aspects, are not evident.

PROF SLOAN: So it could be misleading information you're providing.

MR O'CARRIGAN: No, we provide what the roll and the act as currently construed allows us to provide.

MR CHAPMAN: Are they entitled to use the title, or are they not.

PROF SLOAN: Yes, exactly.

MR CHAPMAN: But as far as - - -

PROF SLOAN: Which could be potentially misleading. Going back to what people think of the term "architect" in a colloquial sense, and your "registered architects", there is going to be some disjunction from time to time.

MR O'CARRIGAN: There could well be, but just as the BDA gave the example of the person that walks in off the street, and you gave the example of speaking to an economist, you make your own inquiries. The board and the act is only one mechanism by which the public may be informed - the consumers of architecture.

PROF SLOAN: What do you think of that co-regulation model? I mean, why don't the architects just become part of the list of building professionals under a Building Act?

MR CHAPMAN: Well, in that case - take Queensland - - -

PROF SLOAN: What's wrong with that, Martin?

MR CHAPMAN: Take Queensland and the Victorian act - that's a matter of practice: you're only entitled to practise if you're registered under those acts. But in Victoria there is still the Architects Act and still the recommendation that that Architects Act is maintained, so there's quite a distinction between - - -

PROF SLOAN: Well, we understand that the recommendation - - -

MR CHAPMAN: - - - practice and title - - -

PROF SLOAN: - - - was the act go, because you've got this provision under the Building Act for a list of building professionals. See, you're only worried about the

derivative in respect of building design, so surely your natural home is in the Building Act along with other professionals who then have to meet - because of course if you want to be a building practitioner under those acts you do have to have continuing - you have to access competency, you have to have professional insurance, and you have to have continuing professional development. I mean, doesn't it fit nicely?

MR CHAPMAN: As far as the practice is concerned, yes, but as far as the use of the title, no. I mean, we have examples now of confusion in the public's mind in cases where people - - -

PROF SLOAN: And that's with the act.

MR CHAPMAN: That's with - well, it's a situation where people - - -

MR O'CARRIGAN: With the act as written, as we've reinforced this morning.

MR CHAPMAN: But these are people who say to us, "Oh, we're using So and So and So and So. They're architects," and we look up the roll and say, "But they're not architects," and people say - - -

PROF SLOAN: But you're telling me people ask all sorts of other questions and, you know, that's why I don't have to worry about anyone calling themselves an economist, because anyone is going to ask a whole lot of other questions.

MR O'CARRIGAN: No, I'm saying that there are other means of receiving information, but with respect to - - -

PROF SLOAN: So is someone going to outlay \$200,000 just on the basis of the fact that they're registered with the New South Wales Board of Architects?

MR O'CARRIGAN: No, they - - -

PROF SLOAN: No.

MR O'CARRIGAN: That's not their sole decision, no.

MR CHAPMAN: That's a starting point. They know at least that a person is registered to start off with. They then make other inquiries as to the type of work the architect does, whether it's going to be compatible with their way of thinking, and so on. There's a whole lot of criteria the public uses.

MR O'CARRIGAN: Yes.

MR CHAPMAN: But the first point is, is the person registered, and we advertise - - -

PROF SLOAN: Have you got evidence of that?

MR CHAPMAN: Indeed we have, by - - -

PROF SLOAN: Could we have that?

MR CHAPMAN: By complaints made to the board about people who - - -

PROF SLOAN: Oh, so it only works ex post?

MR CHAPMAN: Well, whenever there is an offence under the act and it is reported to the board, the board pursues it. If there are many breaches that the board doesn't hear about, of course it can't.

PROF SLOAN: Yes.

MR CHAPMAN: But getting back to the information - - -

PROF SLOAN: Do you keep records on that?

MR CHAPMAN: Yes, we do.

PROF SLOAN: So people ring up and say, "I want to complain about this architect I used" and then you can establish that the person wasn't an architect in the first place.

MR CHAPMAN: I don't know whether the records are kept. Well, the records are kept of every telephone call, yes, however the board can only act - - -

PROF SLOAN: Doesn't that mean the act has failed, therefore?

MR CHAPMAN: Would you let me finish?

PROF SLOAN: Yes, sure.

MR CHAPMAN: The board can only act when there's a complaint lodged. Now, you can advise people as to whether people are architects or not, but it can only prosecute people if people complain. That's the same with any prosecution. The board does advertise. It advertises through its Web site. It has the sections of the act there that are relevant to the public. It talks about how you go about determining whether the person is an architect or not. It has cross-links to the RAIA so that you can get further information. It advertises in the telephone book, that if people are unsure whether the person they're dealing with is an architect or not, "ring this number", and of course through telephone inquiries, so - - -

PROF SLOAN: So they get more information through the RAIA than the board?

MR CHAPMAN: They get information about the nature of the architect's work - in other words, the RAIA would put forward three names, for argument's sake. That's the next step in a chain. The first step is to inquire whether the person is an architect. The second step is, what work they do. So there's the board and the RAIA.

PROF SLOAN: So if this co-regulation model of being a registered practitioner in a Building Act - you are very keen to see the title reserved.

MR CHAPMAN: Yes.

PROF SLOAN: Which would possibly be possible, although - - -

MR CHAPMAN: We are concerned with the title only.

MR O'CARRIGAN: Just to return to your earlier point, which was that we may rest naturally with Building Acts, I think that denies the experience elsewhere in the world where, on the survey information we have, there's over 50 countries, as surveyed by the International Union of Architects, which have either certification of the title or licence to practice, or both. The ones that have title - - -

PROF SLOAN: I mean, you'd be a bit wary of a lot of those countries, of course. Shall we follow the model of Nicaragua or El Salvador, which seems to be in people's lists?

MR O'CARRIGAN: No, professor, I think the needs for consideration are much closer than that. Architects in Australia practise all over the world but in particular in South-East Asia. Most of those countries, their students, and indeed a lot of practitioners there, are registered in Australia as well as locally. If the registration was removed within Australia, the natural consequence would be that most architects, I presume, who wanted to practise overseas or wanted to have that recognition of their title, they would seek to register in New Zealand or Papua or somewhere else.

PROF SLOAN: You didn't seem so unhappy about co-regulation through the Building Act as long as title was reserved. You're not keen on that at all?

MR O'CARRIGAN: No, my position is the same as Martin's. What I'm saying is that there is room for both, surely.

MR CHAPMAN: As far as co-regulation is concerned, say with another body - say there was a national act in place administered by, say, the RAIA, we would be very much against that. As I think the BDA pointed out, any organisation representing a certain profession or calling - their first interest is their members. The purpose of an act of parliament is for the protection of consumers, and the two are mutually exclusive.

MR O'CARRIGAN: Yes.

PROF SLOAN: This act, of course, doesn't state that, really. I mean, all these acts came about at the behest of the architects profession, not to protect the consumers.

MR CHAPMAN: Nevertheless, nowadays - - -

PROF SLOAN: And mostly they've been dreamt up at different - - -

MR CHAPMAN: No, nowadays you won't convince any government to pass an act in respect of a particular group of people unless it can be shown it's in the public interest.

PROF SLOAN: So you think the accountancy profession is inferior, do you, because it has no statutory registration and is self-regulated, and so the accountants' associations are driven entirely by the self-interest of their members?

MR CHAPMAN: Largely, yes.

PROF SLOAN: Right, and Australian architects are unable to secure work overseas and work overseas themselves?

MR CHAPMAN: Sorry, Australian architects are not?

PROF SLOAN: Australian accountants?

MR CHAPMAN: I'm not aware of the details of the accounting profession. I am concerned with the - you talk about other professions and - - -

PROF SLOAN: Yes. It's an important point, isn't it? There's plenty of other professions get on - - -

MR CHAPMAN: No, it's in respect of - we're talking about quite a narrow matter here, and that's the use of a title, and - - -

PROF SLOAN: Yes, which is not reserved for many other professions.

MR CHAPMAN: Well, certainly it's not reserved in the case of, say, lawyers, or it's not reserved in the case of doctors, but before they can offer those services they must be licensed medical practitioners, so there's - - -

PROF SLOAN: But that's not true of - - -

MR CHAPMAN: - - - a licensing there.

PROF SLOAN: Let's talk about engineers and accountants. Now, they are self-regulated professions.

MR CHAPMAN: Yes, and they're having enormous trouble overseas.

PROF SLOAN: And they don't - are they?

MR CHAPMAN: Engineers are, yes.

PROF SLOAN: Oh? Could you give us evidence of that?

MR CHAPMAN: I can only give you anecdotal evidence, such as most of the evidence you have before this commission.

DR BYRON: My understanding was that the APEC engineer system was actually starting next month, involving eight countries, and is likely to expand to 15 within the next year or two.

MR CHAPMAN: Yes, they're just starting. They're just starting.

DR BYRON: It's taken them about two years to get that going.

MR CHAPMAN: It has taken a lot longer than that, doctor.

DR BYRON: But it does seem as though now there is a system where Australia's non-statutory accreditation of professional engineers is accepted and reciprocated amongst a number of our major Pacific basin neighbours, and that seems to be expanding. Now, what I find very interesting is that non-statutory accreditation of the - you know, the experience, the excellence, the capabilities or whatever, and the professional integrity of the engineers is unquestioned internationally, in spite of the fact that it's a self-regulatory body. Nobody is assuming that all Australian professional engineers are in some ways lacking in ethical standards.

I actually attended an annual meeting of the board for the National Register of Professional Engineers and one of the things that struck me was that their concern was that they had some people on their register who really shouldn't be there, and they were determined to very aggressively cull out those bad apples. Now, that seemed to me to be an example of a self-regulating body going to enormous efforts to make sure that the standards that they maintained and projected to the public were the highest possible standards. They didn't want any so-called bad apples lowering the esteem and the respect and the integrity of their group and their badge, their register.

Now, what I find difficult to understand is that if that system seems to be working quite well for engineers, why are so many people telling us it couldn't possibly work like that for architects? That's where I'm a little confused.

MR O'CARRIGAN: Well, I think the view of the board is that if there was no act, then we would know in the future. At this time it's an unknown quantity. The fact is, what you're trying to compare there is statutory regulation which is limited on the terms on which the act was written, with a self-regulated situation that sets up its own

rules. The two can't be compared.

PROF SLOAN: Well, I think they can, and probably the self-regulation model comes out much more favourably to certainly the current architects acts, a point you would probably concede.

MR CHAPMAN: Yes, we agree with the existing acts but we're concerned that in your report you really haven't concentrated on future legislation, and that's part of your terms of reference.

PROF SLOAN: Yes. I think we have. It's all in chapter 9.

MR CHAPMAN: Yes, you refer to it but then you dismiss it. You refer to - - -

PROF SLOAN: Well, don't forget we have to assess whether the community benefits exceed the community costs of the existing acts.

MR CHAPMAN: And there doesn't seem to be any evidence - - -

PROF SLOAN: And in chapter 9 there is I think a very wide-ranging discussion of their weaknesses and how you might go about remedying it. It would be outside our terms of reference to be, for example, assessing specifically the AACA legislative guidelines.

MR CHAPMAN: Well, in that case, then, the New South Wales government would have to persist with its review because under the COAG agreement a review must look at existing legislation and future and proposed legislation, so if you're not looking at future and proposed legislation, the New South Wales government is required to under the COAG agreement and will have to maintain - - -

PROF SLOAN: Well, not under the competition policy agreement which runs this actually. That's a superior - - -

DR BYRON: I'd just like to come back to your point that we look at it and dismiss it. We actually looked at it and gave an enormous amount of thought and analysis to it. We didn't dismiss it. We concluded that it was unlikely to deliver the net benefits. Now, the fact that we came to a conclusion which is different from the one that you would come to does not mean that we didn't think about it or we arbitrarily dismissed it. We gave it a great deal of thought and then concluded that it wasn't likely to be the way to go, and that the non-statutory method could actually deliver much greater gains to the community without the economic distortions and consequences that would arise in the legislation.

PROF SLOAN: And much more quickly too because, I mean, everywhere we go we seem to hear that people - similar to those in the opposition - have been trying to get these state acts changed for years and years and years, and the truth is that there is not much constituency amongst governments to change something which looks

principally to support a profession.

MR CHAPMAN: Well, if you consider that's the support of the profession, I frankly don't. I believe the act is there for the benefit of the consumer. It's the way that the board has always acted.

PROF SLOAN: Can I ask you then why you would constitute a board made up more or less entirely of architects if it's there to protect the consumer?

MR CHAPMAN: Well, I would agree with you.

PROF SLOAN: Does that not give you the impression that this is being run by the profession for the benefit of the profession?

MR CHAPMAN: There are two aspects to this. Firstly, I would certainly agree there is a place for more consumer representatives on the board. The AACA guidelines say that. Secondly, in our case, if we say have a disciplinary tribunal we've always made sure that the lay representative on the board, because we do have a lay representative on the board - or say we have had up until the last six months. We're waiting on the minister to reappoint somebody. We always made sure that the lay representative serves on the tribunal, so that it's just not made up of architects, and in recent years - - -

PROF SLOAN: And often long-serving architects, as far as we could see. People seemed to go on the board for years and years and years.

MR CHAPMAN: Yes.

PROF SLOAN: Does that imbue consumer confidence? It looks like a club, doesn't it?

MR CHAPMAN: Well, in the case of New South Wales there are three people who are elected by the registrants at large.

PROF SLOAN: Right.

MR CHAPMAN: There are - - -

PROF SLOAN: Even though the board is there to protect consumers?

MR CHAPMAN: That's right. I mean, the board is financed from architectural registration fees. There is certainly a benefit to architects in being registered, there's no question of that.

PROF SLOAN: Right, okay.

MR CHAPMAN: We agree with that, but there are two purposes in this. One is to make sure that architects are properly regulated and, secondly, that the consumers are not confused by the misuse of title.

PROF SLOAN: And so do you spend most of your time then trying to stamp out the impostors, as we - - -

MR CHAPMAN: The board is required under the act to administer it. If there's a complaint lodged for a breach of the act, the board is required, so we do what the act requires us to do.

PROF SLOAN: Do you act on your own motion from time to time?

MR CHAPMAN: Yes, we do.

PROF SLOAN: What about this issue of attracting overseas students? It seems to me, as you probably would know, that the discipline which has been most successful in Australian higher education of attracting overseas students is in fact accounting, which of course has no statutory regulation - registration, but you maintain that this is important for attracting architecture students.

MR CHAPMAN: There are requirements in those other countries for registration and so therefore their requirements have to be met, so you have a reciprocal arrangement.

PROF SLOAN: Right. We've been pretty good at attracting engineering students too. So your argument is that registration is required here because those countries have registration too.

MR CHAPMAN: No. Our basic argument is that the registration is required here so the public knows who are architects and who are not.

PROF SLOAN: Right.

MR CHAPMAN: That's our number one concern, and it's essential that it's public knowledge. Secondly, if they do have an architect, there should be some measures of consumer protection, and thirdly, if people misuse the title and confuse the public in this way, then they shouldn't do so.

PROF SLOAN: There seem to be some criticisms from time to time of the lack of transparency over the registration process, and including some amongst our very large number of submissions, that on the face of it look like legitimate complaints from overseas qualified - well, I can't use the term "architects", can I? Persons.

MR O'CARRIGAN: They are graduates in architecture, possibly.

PROF SLOAN: Yes, graduates in architecture.

MR O’CARRIGAN: Or diploma, yes.

PROF SLOAN: In the new age of higher education, transparency is the go.

MR CHAPMAN: Indeed.

MR O’CARRIGAN: Yes.

PROF SLOAN: And people have a right to know why they pass and fail and criterion - - -

MR CHAPMAN: Exactly.

PROF SLOAN: So you think your process tacks up well?

MR CHAPMAN: Indeed. Our board is subject to the Freedom of Information Act. A private organisation is not. Transparency can be achieved through the freedom of information. The method of assessment of examinations is published in all documents. That’s in respect of candidates, it’s in respect of examiners, what the requirements are - are all open. So there is transparency. I would suggest that self-regulation in the hands of a private organisation cannot ensure transparency.

PROF SLOAN: I think we’ve got some very good examples of - I mean, the accountancy one is one which is very transparent.

MR CHAPMAN: Yes, but you can’t ensure it without an act of parliament.

PROF SLOAN: Well, I’m not sure an act of parliament does ensure it. You can’t say that your processes were always transparent, were they?

MR CHAPMAN: Well, they have been for at least the last 20 years.

PROF SLOAN: Right, and there seem to be some quite serious criticisms in the submissions.

MR CHAPMAN: Well, let me just put it this way. The AACA - anybody coming in from overseas is assessed by the AACA on behalf of the Commonwealth government, whether their requirements meet those of Australia or not. Those of Australia are the same in most other countries in the world: five years of architectural education, plus two years postgraduate training. Now, those people who come say from Germany in many cases come out with a four-year qualification, not a five-year qualification. Now, in those cases they can then sit the AACA national program of assessment, which are based on the competencies, and if they meet the competencies they meet the requirements for academic qualifications. So there’s no

closed shop,

there are avenues open for people, both Australians and overseas, to become architects. If they don't wish to or haven't completed a university course part way through - - -

PROF SLOAN: But, you know, we have examples of people who have been working as architects, then being forced to go through that two-year period of employment as an architect under a registered architect.

MR CHAPMAN: Well, the registration requires two years of practical experience under the supervision of an architect and it has to be lodged, and it has to be lodged so that - - -

PROF SLOAN: But these are people who have had maybe 15 years' experience working as architects overseas.

MR CHAPMAN: It has to be lodged so that one can be examined on their practical experience. There are statements of practical experience to say what they have done. They're then examined on that, using the competencies. No matter how much experience people have had, if they don't know the Australian regulations, for argument's sake - and that would be one requirement for at least one year under an architect in Australia - - -

PROF SLOAN: You have to understand, though, that there is always a possibility - there seem to be two aspects. First of all, I climb Mount Everest so everyone else is going to. So that's point 1. Secondly - and you see this in the medical world - there are forms of words that can justify these things but end up actually being quite serious anti-competitive restrictive practices. There seems to be on the books a possibility that someone becomes a registered architect if they don't have an architecture degree, but if you look at the numbers of people who achieve that, it's absolutely trivial.

MR CHAPMAN: Well, the numbers of people who apply aren't very many.

PROF SLOAN: Well, that's partly because it's very expensive.

MR CHAPMAN: Most people coming from overseas who have a proper qualification - I say "proper" - one that is recognised by our acts - they then sit the practice examination, as do other architects, other people with a bachelor of architecture, so they all have to prove themselves in relation to the competencies.

PROF SLOAN: But you're asking people to reprove themselves. In one breath you're talking about the importance of international recognition and how because everyone else has a statutory system we have to have a statutory system, but then in fact make it very hostile for those who come in from overseas countries that have statutory registration systems.

MR CHAPMAN: Not at all. Those who come in from other countries are required to have practical experience in Australia, just as Australians going overseas are

required to have practical experience in other countries.

PROF SLOAN: So it's not actually internationally transferable, in other words.

MR CHAPMAN: That's part of it. That's certainly part of it.

MR O'CARRIGAN: That's a very key point. If you look at North America, the very minor proportion of the architectural profession in all its shades and colours are registered architects. That is the highest accolade, and that is for those that certify and sign off work, just as certified practising engineers are required by most local councils to sign off structural designs. Certified landscape architects, or designers in a lot of instances, are required a DA to sign off on drawings. There is no requirement, no restriction, for architects or architectural design to be provided in that manner. So whether people choose to practise within the profession and not hold the title of architect and rely on their graduate qualifications - - -

PROF SLOAN: I'm not sure choice is the right word in a lot of those cases.

MR O'CARRIGAN: Well, what's the suggestion, that there's an economic reason or - - -

PROF SLOAN: No, I think - - -

MR O'CARRIGAN: - - - a prohibitive reason or a discriminatory reason?

PROF SLOAN: Yes.

MR O'CARRIGAN: Why people don't come forward for registration?

PROF SLOAN: Yes.

MR O'CARRIGAN: Well, I think it's - - -

PROF SLOAN: Well, I suggest you read through some of the submissions. I think they make quite compelling reading.

MR CHAPMAN: We've read through a number of those and there's one, for argument's sake, who has complained bitterly about the registration examination, the practice examination, and it's quite clear from this that a person hasn't achieved the standards required. The pass rate in that examination, by the way, is 88 per cent. 88 per cent of the people who apply pass that exam. Now, does that look as though we're trying to keep people out? Discrimination?

PROF SLOAN: No, it doesn't, although you have to say that there's a tremendous drop-out rate between the numbers of architecture graduates and then the numbers of registered architects.

MR O’CARRIGAN: Well, I’d suggest that is a matter of time and experience. The requirement is across 10 areas of competency and experience that you have a required minimum level of experience in four areas. Now, in my instance I didn’t register within the first two years of graduating. I chose to get - - -

PROF SLOAN: Yes, but that doesn’t make any difference because it’s always lagged. So you wouldn’t expect such a huge numerical gap between the number of architecture graduates and the number of registered architects, new registered architects.

MR O’CARRIGAN: Because essentially it’s an example of a free market in operation, that you can have a perfectly worthwhile professional activity and career in the architectural domain either as a BDA member, as someone who works for registered architects, as someone who doesn’t practise but has numbers of project managers and others working in allied para-professional areas that have architectural qualifications. As the BDA said this morning, it’s quite numerous. It is a very useful degree to have and not everyone wants to carry, if you like, the title "architect".

DR BYRON: I mean, Tasmania is an easy example because it’s so small, but for many years you’ve got say 50 people a year graduating and every year there’s about four or five who get registered. It suggests that, you know, 90 per cent of the people who are going through a five-year degree program are then going off somewhere else and only 10 per cent are actually going to registration. Now, that seems like a fairly high - well, drop-out is not the right word, but a high percentage of people choosing to do something else other than register.

MR O’CARRIGAN: No, I’d suggest to you, sir, that that’s the size of the market in Tasmania, that most of those people you may well find come to the mainland or go elsewhere and they may register there.

DR BYRON: Okay, that’s probably not a very good example.

PROF SLOAN: Yes, but we can actually aggregate - - -

MR O’CARRIGAN: Do your statistics indicate whether they register elsewhere?

PROF SLOAN: Yes, you can aggregate them and there clearly is what you might call a very large leakage rate from the number of architecture graduates compared with the number of registered architects, even allowing for variable lags.

MR O’CARRIGAN: But I’d ask in the context of this inquiry - is that problematic for the act?

PROF SLOAN: It could be, because it could be an anticompetitive aspect of the process if you’re setting up barriers which actually aren’t really relevant to preservation of title.

DR BYRON: We were given some evidence in Brisbane last week that I think from memory the figure was that Australia has more registered architects per capita than any other OECD country in the world. Now, if one was a little bit cynical you would think, well, in times of intense competition if there is a relative oversupply of architects - and, I mean, I wouldn't like to push that point too hard - that would then encourage you to look around: well, are there any restrictions on entry into registration? Are the standards for achieving registration higher than they need to be in order to have some sort of exclusionary effect? I mean, that's just what we're looking into.

MR O'CARRIGAN: I could equally counter that and suggest that of those registered in New South Wales there's quite a substantial proportion that live and work overseas but still maintain their registration in Australia; they never practise in Australia.

MR CHAPMAN: A measure, if you like, of oversupply, and certainly I agree with you that there are more registered architects in Australia per head of population than in other countries, many other countries, but nevertheless that's a matter of choice: people go through it and become registered. But let me say this, if a bachelor of architecture, a graduate, had the kind of practical experience that they used to have 25 years ago or 26 years ago or even longer ago than that, then you probably wouldn't have to have a practice examination; if all the competencies were examined in the parts of the bachelor of architecture course, then fine, but you find, for argument's sake, in medicine a person is required to have a certain internship, in law you have to go to the college of law. There's a place for the academic qualification and a place for getting the experience, and just as the academic qualification, to get that one is tested; the same with the practical experience, the benefits of that are tested - again, subjective criteria - namely, the competency standards.

DR BYRON: No, I have no trouble with any of that. I completely accept what you're saying there. I'm particularly relieved to see the reference to the competency standards, because at times there seems to be an enormous amount of evidence on qualifications which, I think you'll agree, are sort of backward looking, they're historical. It's, "Where have you been?" rather than, "Where are you now and what can you do and where are you going in the future?" It's certainly much easier to assess what has happened historically - you know, "How many years has this person spent in a particular school?" and so on - but in many ways what the accreditation or certification process really needs to assess is not, "How many years have you spent sleeping through lectures?" it's, "What can you actually do?" that really counts.

PROF SLOAN: Or cramming at the end.

DR BYRON: Or cramming at the end, yes, that's it. So the switch from something that's backward looking and qualification focused to something which is forward looking and competency based, I think we're probably midway through that transition, but I suspect that we'll continue to move away from the backward-looking

one

towards the performance rather than qualification.

MR CHAPMAN: I would agree that the time of two years, for argument's sake, it depends what you've been doing, but when it comes to the crunch, when you have to show that you have had experience, you have been taking decisions at particular levels, professional levels, and measured against the competencies, then that's fine, and if somebody could front up straightaway and say, "Look, I now meet the competency standards, why can't I sit the exam?" when that is widely acknowledged, that one is tested against the competencies, you'd still find people who would be waiting one year, two years, three years, four years, until they reach a level of competence.

DR BYRON: Certainly.

MR CHAPMAN: And that's reasonable.

DR BYRON: I guess the most relevant thing for this inquiry is whether that assessment of competency and skills, expertise, judgment, etcetera, can only occur in a statutory system or whether a - - -

PROF SLOAN: And in a one-off situation at the moment.

DR BYRON: Yes, or whether a non-statutory system with continuing recertification, revalidation could do at least as well or better in ensuring for the public benefit that all the practitioners really are up to the mark.

MR CHAPMAN: You're talking about certification and licensing. We're talking about the certification of title. Now, I would agree as far as a practice is concerned there should be some measure of regulation - there is at the moment in some places - but as far as use of the title is concerned for the first-up business of making it clear to the public who are people with a certain level of qualification and experience and have achieved that, it's one proof. I'm not saying that other people cannot do it, cannot reach that level, but the title "architect", it's a first proof; the quality then is a matter of further investigation, as we say.

PROF SLOAN: But isn't that the point? I've got one of your colleagues who's written a submission who said:

In my experience as an arbitrator and mediator in building disputes I have to read contract documentation prepared by architects as well as by others, such as builders, designers, draftspersons, project managers. I have found that it does not follow that if the author is an architect then the documentation will be necessarily superior.

And then he says:

I have witnessed both architects and other designers performing architectural

services -

actually he's said that "illegally of course" -

some professionally and some not so professionally, if at all, with some of each category in both types of architectural service providers -

again, he's said "illegally". You know, it seems to me that you've got this wonky one-off measure of input, what economists would call it, and you're telling me that that provides some benefit of the output at the consumer level.

MR O'CARRIGAN: I think part of our argument is twofold: one is that there's - - -

PROF SLOAN: And the government should support this system.

MR O'CARRIGAN: The government should, in our view, support an improved model, not the flawed model.

PROF SLOAN: Okay, so it shouldn't support the existing system.

MR O'CARRIGAN: It should support the principle of the system but not the existing example of that principle.

PROF SLOAN: Would you agree with this person?

MR CHAPMAN: I would say that that could well be true. The issues that a number of contracts - - -

PROF SLOAN: He was an academic like you, so - - -

MR CHAPMAN: The number of contracts that come up for review at arbitrations would probably be about .01 per cent, so that you're going to find that there are some in all walks of life who don't perform as well as they should do, but you can't use that as an example to prove the point that registration is not desirable.

PROF SLOAN: I think you can make the point though that these kind of input measures aren't very good in terms of determining the quality of the output, which is what, after all, people are interested in.

MR CHAPMAN: In the case of .01 per cent of the population I would agree with you, but not in the case of 99 per cent.

MR O'CARRIGAN: I think one of the things - notwithstanding the way the act is written now, if that person you spoke to was involved in an arbitration and the architect was found to have been negligent in some respect then the opportunity is there for the appropriate mechanisms under the act, either - - -

PROF SLOAN: For them to be deregistered.

MR O’CARRIGAN: A reprimand or removed from the register.

PROF SLOAN: He does make the point:

I have learnt that exactly the same duty of care is expected by law of both architects and non-architects. What matters is not the title a person trades under but what the person undertakes to do and then actually does.

So what you’re saying is that someone then can go on, if they could be bothered, and seek deregistration of an architect. Now, in that state over a very long period of time six people have been deregistered as architects, and two seem to have been murderers so we can probably eliminate them from the list, can’t we? It seems a very rare occurrence indeed that people are deregistered. Is that true in New South Wales?

MR CHAPMAN: From my experience I think only two in recent years have been deregistered.

PROF SLOAN: Yes, and in fact in some states - - -

MR CHAPMAN: Let me finish, please.

PROF SLOAN: - - - gross incompetence as an architect - - -

MR CHAPMAN: Let me finish, please.

PROF SLOAN: - - - is not a ground.

MR CHAPMAN: You’ve made a point. If you’d let me finish my comment - that in that case it’s probably an indication that the act is working fairly well, that architects do take their responsibilities fairly seriously, but those who do not and notice has then come to the board, then they are prosecuted and they’re deregistered. But the mere fact that the act is there and requires certain levels of performance is a deterrent, I would suggest.

DR BYRON: But the board doesn’t have the power to make restoration or - - -

PROF SLOAN: Order restitution.

MR CHAPMAN: No.

DR BYRON: So if I were an aggrieved party and I found out that I could appeal to the board, in which case the most that might happen is that the architect I’m

complaining about could be deregistered, or I could go to the courts and hope that I could get a few hundred thousand dollars in compensation and restitution, I might not even bother referring to the board.

MR O'CARRIGAN: You might not, but our recent experience is in fact that people do do that, because they would rather appear in court, put their case and say, "By the way, this architect has been reprimanded or deregistered," in terms of supporting their case. We have had exactly that same circumstance, where the commercial remedies are quite evident, they are fully versed with legal advisers and yet they still come to the board.

MR CHAPMAN: I think you'll find, Dr Byron, that it's the same in most legislation, that there is, you know, a requirement for registration, that one cannot get restitution from the body - say under the Motor Traffic Act - - -

DR BYRON: Sure.

MR CHAPMAN: - - - you've got to go to common law to achieve restitution. The point that we have made though is that we believe that there should be some method available to the public and that should be through compulsory professional indemnity insurance so there is something there, that once somebody has proved to be at fault and somebody has suffered loss then there's an avenue for restitution, and that's an important consumer measure in our view.

DR BYRON: I was just wondering if there was any other possible explanation for why the number of complaints to the board was so low, apart from your explanation that it's working incredibly well as a deterrent. That's why I was wondering - it would be interesting to see the relative numbers of complaints that went to the courts as opposed to complaints that went to the board. That's all right, I'll accept your explanation on that. That sounds quite reasonable.

PROF SLOAN: Is there anything you'd like to say just in summary, because we'll break for morning tea?

MR CHAPMAN: No, I don't think so. I'd just like to reiterate our point that the public is entitled to believe the title that is held out; that a person has an architectural qualification and in the sense of meeting the requirements of registration they can be called an architect. Those who are architectural draftspersons can call themselves an architectural draftsperson and those who are architectural technologists can call themselves architectural technologists. There shouldn't be a means of allowing people to provide or say they are providing services which in fact they are not. The whole purpose of registration is to distinguish between those who have that level and those who have not.

PROF SLOAN: Thank you very much, Martyn.

MR CHAPMAN: Thank you.

PROF SLOAN: We'll now have morning tea for a period of time and then recommence our hearings in half an hour, 20 minutes or so.

PROF SLOAN: We've come to a mutually beneficial arrangement whereby the next three presenters are going to present together, although you can't speak all at once, but for the purpose of transcript, if you could state your name and your title.

MR WIEGMANN: Michael Wiegmann, Wiegmann Drafting Service.

MR WALKER: David Walker. I'm a building designer from Penrith.

MR PURTELL: My name is Mike Purtell. I'm a building designer from the Blue Mountains, running a small building design practice in the Blue Mountains. I have some 28 years' experience working in the industry, which includes a TAFE certificate in architectural drafting and a degree, a Bachelor of Science in architecture, and a certificate of small business practice. I've been running a small business for 11 years.

PROF SLOAN: So have you ever sought to become a registered architect?

MR PURTELL: It has crossed my mind and I've made inquiries. However, there are other areas in your life that you have to manage and I've come to the conclusion that - well, I did inquire of late at - the architects do have a system whereby you can - it's a six-month course which you pay some 3 and a half thousand dollars for but I was told also that only 50 per cent of those people that apply get through and it's a very - look, it's just - I'm happy to work at the level that I am working at.

PROF SLOAN: So you've got a BSc (Architecture) but that wasn't a five-year course, was it?

MR PURTELL: I was actually at university for eight years. I started full-time.

PROF SLOAN: That's a different issue, isn't it?

MR PURTELL: My intention was to complete a qualification of Bachelor of Architecture but due to - I got married, so it was a matter of consolidating my course.

PROF SLOAN: Right, so that ended up as, what, a three-year equivalent or something?

MR PURTELL: Yes, I did four years' study. I have one year to finish.

PROF SLOAN: Right, okay, so you could have tried to leap over that hurdle but it looked a bit high.

MR PURTELL: Yes. Well, as I say, the life that I live now in the mountains is one that I'm happy to be with and I probably won't pursue at this stage the - yes, I won't seek out to be an architect. In fact I'm very happy to call myself a building designer - - -

PROF SLOAN: Right.

MR PURTELL: - - - and function at that level. But I'm also very aware of the - that you live within a market and, you know, to be able to be flexible to function in that market.

PROF SLOAN: Would any of you want to call themselves architects?

MR WALKER: No.

MR WIEGMANN: No.

MR PURTELL: Look, working at the level we work at, often you meet clients who will get involved in the design and they'll introduce you as the architect, and you're not the architect; you're a person - - -

PROF SLOAN: They're just using that in a colloquial sense.

MR PURTELL: Sometimes that can offer a bit of a confusion, as you can imagine. Do you then speak up and say, "Well, I'm not an architect," as probably the chapter would ask you to? Sometimes we do; however, probably more than not, you actually don't define yourself.

PROF SLOAN: What about those derivatives? I mean, does that create more problems? Would you like to call yourselves providers of architectural services?

MR WALKER: I'm honestly very happy and feel very comfortable being a building designer and calling myself a building designer with the type of work that I do, and I really - I've educated my clientele to know that that's what I do. I don't need to say that I'm an architect but I do have difficulty being told that I can't use the word "architectural" or advertise it as such.

PROF SLOAN: So you would normally say you're a provider of building design services?

MR WALKER: Exactly.

PROF SLOAN: But there might be some instances where you would want to say you provide architect services. Would that be a lie?

MR WALKER: No, no, it's not a lie.

PROF SLOAN: Right.

MR WALKER: The average client would come out and see me and would want architectural drawings - I mean, that's what we do - to obtain council approval. They

don't say - I think the average person out there is educated to say "architectural". They don't say "building drawings" or "building plans" and I feel that - I think I'd like to say that yes, I provide a full service as an architectural designer.

DR BYRON: Could I just pick up on that point? Michael Purtell, in your submission you said, "We as architectural designers do practise facets of architecture."

MR PURTELL: Yes.

DR BYRON: I think it was in Brisbane last week it was argued that architecture is an enormously wide spectrum of services and that building designers are actually a subset of that.

MR PURTELL: Very much so.

DR BYRON: So coming back to your point, David, about architectural services, do you feel the need to sort of circumscribe what you offer and say, "We provide some architectural services but not necessarily in the broadest possible sense"?

MR WALKER: True. The only thing is I wouldn't like to be restricted to say that I couldn't design a shopping centre, for example. I might not want to do that but I would not like to be told that I can't do that or I can't design a building of five storeys or over, or whatever. I've been in the industry 30 years and I think with that experience - and I've had my office for 16 of those years and I honestly believe that if I feel confident - and I wouldn't take a project on unless I felt confident and nowadays, with the legalistic approach to the industry, you would be an absolute fool to take something on that you couldn't actually take on.

DR BYRON: That's the next point I wanted to ask you about from your submission, because we've asked in a number of other hearings about why is it that self-regulation seems to work very well with professional engineers but we're told that it couldn't work with architects. Architects have said, "Well, that's because engineering is so incredibly complicated that if somebody wasn't competent to do the job they'd be caught out in the first half an hour." You know, you can't pretend to be a qualified professional engineer if you're not, but the implication with that is that somebody could pretend to be competent in architectural design services when they weren't.

Now, if somebody asked me to do architectural work for a big house or a two-storey block of units or something, I wouldn't know where to start. I think I would get caught out in the first five minutes. In your submission you make the point that the preparation of design and drawings is a huge responsibility and shouldn't be taken lightly, dealing with clients, etcetera. What you're saying seems to be that the tasks are sufficiently complex that an incompetent amateur wouldn't get away with it. Am I right?

MR WALKER: I agree totally. When we sit down and get the brief from the client, one of the biggest first hurdles is the budget. There's no point designing something the client can't afford and that's probably - I think it's forgotten and has been forgotten along the line, whereby we have a tendency to try and work, as best to our ability and probably costs - to working within the client's budget and their lifestyle; in fact, actually taking note of what the client wants, not giving the client what it doesn't want. I'm not saying for one moment that architects do that but I'm just saying that we - and that's in my area summary, that I have a responsibility to my client and I'm not prepared to actually cheapen my services or disillusion my client by saying, "Yes, but I know full well that I can't."

Most of my clients - as I should imagine most professional building designers would get their clients through recommendation because that's how you survive. The Yellow Pages and advertising, really they're tyre-kickers, half of them you wouldn't want anyway. It's just purely recommendation of the work that you do in the area. They've seen your name; it's gone from builder to builder. A builder would drop you like a ton of bricks if you couldn't do the work, because he has to work off your drawings. At the end of the day it's the client having confidence in you as a person to design that structure for him, and you providing that service - a professional service.

PROF SLOAN: It has been said to us that in fact the building designer's fee schedule, or whatever that means because pricing sort of varies a lot, is probably not necessarily lower than that of the architects who are competing in the same field. Would you agree with that?

MR PURTELL: I think it's an emerging - building designers as such haven't been around as an ordered group for that long. I think we are becoming aware that in the past we have worked for far too little return for the complexity of work and the risk of litigation. In other words, the responsibility of drawings and design that we provide is quite a huge responsibility. I would consider no-one in our industry should perform without professional indemnity because of those. So, yes, I know that my fees are much lower than architects.

MR WIEGMANN: If I can add to that, I used to be a member of the BTA branch in the ACT when I used to live in that neck of the woods. They actually produced a fee schedule and it's a brave man who would try and do the same thing today. That was about five years ago. It's a complex thing because no design can be categorised. You can't say a four-bedroom house is going to cost you so much per square metre to design. It depends on the client, how open and willing he is to tell you exactly what it is that he wants. In other words, how clear is the brief?

PROF SLOAN: Right.

MR WIEGMANN: People ask me all the time, "What's the difference between an architect and a building designer?" I used to answer, "About \$200,000 a year," but after reading the statistics in your draft report I can no longer say that because, obviously, there isn't that much difference between our fee structure. As Mike has

alluded to, we certainly know what our costs and responsibilities are. PI Insurance is not a cheap thing; nor is keeping our skills up. We come to professional development days, we come to things like this and give up our productive time, and that has to be factored into what we charge for our services.

PROF SLOAN: Can I just get your view on this issue of the derivative? You said you didn't want to call yourself an architect.

MR WIEGMANN: No, I don't aspire to that but I don't denigrate the term either. I think if you've earned that title then you should call yourself an architect, and that's what both my submissions have alluded to. I don't want to call myself Michael Wiegmann Design because you might ring me up and want a teapot designed. I do architectural design. I don't do engineering design. I don't do electrical drafting. I don't do civil drafting. I do architectural drafting, and so it's a word in the English language. English is not my first language; it's the language that we use here and I'd like to be able to use it.

DR BYRON: I think you've made that point very clear in both your submissions. The adjective is necessary to accurately describe the work that you do.

MR WIEGMANN: It's in the public interest. At the end of the day, if it saves them a telephone call, because they want someone to design something other than something architectural, then it has already served the public interest.

PROF SLOAN: The segment of the market that you operate in is largely residential, is it?

MR WALKER: Yes.

PROF SLOAN: Right.

MR WALKER: I do multi-unit housing and commercial.

PROF SLOAN: Right. What about these - it was brought up by the BDA that there are some - how should I say it - limitations out there in the market that impact - you know, they talked about government work and designer work. It probably affects you most, doesn't it?

MR WALKER: I get terribly frustrated that we probably aren't - our practice is probably close to conservatively 40 per cent of the multi-unit housing in Penrith and I can show cases that we've designed housing developments, multi-unit housing - three in one street, and then a Department of Housing development appears in the same street, yet you're never told about it. You're never even given the opportunity to tender. That the amount of even local government work - we've won design awards, even Penrith Council gave us a design award for a commercial building, so we are known there and I sit on quite a number of committees for Penrith Council and yet we're still not - because I'm not an architect, we are not given that opportunity to

tender on these projects, which I think really is wrong insofar as our fees are obviously substantially less, but it goes to an obscure architect from St Ives - not that there's anything wrong with St Ives, but there should be - - -

PROF SLOAN: It's a good place to live, isn't it?

MR WALKER: So they tell me. But the thing is I feel that we have the right to tender in our own backyard and that's really what it is. I've brought this up at a number of meetings, but it seems as if there's a closed shop for architects only and we just don't get a look in, and it is terribly terribly wrong when it is basically residential and we produce the same product as they would, so I find there's something wrong there.

MR WIEGMANN: The residential arena isn't the only arena that we work in. Obviously, it's a mainstay in most practices, but my experience over the years has been in residential, commercial, industrial. I've done resort work in the snowfields. I do commercial work. I'm currently working in collaboration with someone else on a fairly large truck stop, service centre, resort development and hotel and community centre in Hartley, total value 10 and a half million.

PROF SLOAN: But are they mainly private arrangements? I mean, obviously, the market is not preventing you - - -

MR WIEGMANN: Yes, they are. However, it was mentioned earlier that liquor licence work - or I've done numerous liquor licences for restaurants and our lodges down in Thredbo and Perisher and Jindabyne restaurants, nightclubs. I didn't even know until today that I was not supposed to be doing that.

PROF SLOAN: No, that was in South Australia. My point about that was that I think that was inadvertent, but the person who drafted the Liquor Licensing Act didn't know that the term "architect" had a legal meaning, I'm sure.

MR WIEGMANN: Certainly the magistrates have accepted the documentation that I've put in, whether or not it was accepted on its face value.

PROF SLOAN: There's that issue about whether it's in legislation, but I'm sort of more interested in what you're saying - I mean, arguably, whoever contracts the work can do whatever they like, you know, and if they think that on average employing an architect as opposed to a building designer gives them what they want, I suppose that doesn't matter. But I mean, your point is - - -

MR WALKER: I just think it's restricted trade really. The fact is we're not given that opportunity and that's probably the main issue. I'm not disputing that an architect would do a better or worse job - nor would I for that matter - but I'd like to be given that opportunity.

PROF SLOAN: Right, yes. I wonder whether some of it is inadvertent, so when,

whatever council, puts forward a brief for a tender for architectural services - - -

MR WIEGMANN: I think councils know.

PROF SLOAN: They do know?

MR WIEGMANN: They'd know the difference between an architect and a building designer.

MR PURTELL: In fact, the Building Designers Association has reported various incidents throughout the Sydney region where councils have tried to restrict the active medium-density work to architects, which we find is just not acceptable. Many of us have very good track records in the performance of medium-density. I find it very disturbing, too, the way the residential industry is talked about. It's actually quite a complex industry at different levels and also the work that is provided to serve that need. It can be a set of plans that are very basic to a set of plans that are very well resolved, so to talk about work in the residential domain as an act of simplicity is just not understanding the industry. Alterations and additions can be very complex work. There's a lot of responsibility to get it right - to get the form right.

Also I find disturbing the way that people of this state have spoken about the form of outcomes. In other words, what you see in the streetscape has been talked about to be very deficient of quality design. It's important to understand the parameters that go in to design, the regulations provided by councils, the limited parameters of costing. There are many many facets that we have to work within and I think we do a damn good job.

PROF SLOAN: I think that goes back to my input and output point, too, that - yes, and just because someone is an architect - and the architects would agree, I think - it doesn't provide superior product necessarily.

MR WIEGMANN: The same as with someone who calls themselves a "building designer" or a "member of the Building Designers Association," doesn't necessarily mean that they're a good or a bad building designer. As simply an Indian in the tribe of the BDA New South Wales, I have got to toe the line as far as professional development is concerned because after the end of this month I won't get a membership renewal, so I don't see that in place in other arenas in this industry.

DR BYRON: What you're saying, though, is that the membership of the association adds something to your practice in the sense of respectability, credibility, authority and accreditation; that you've met the standards and the CPD and PII and so on. What you have at the moment is self-regulation or co-regulation, where you feel there are pressures on you to maintain standards.

MR WIEGMANN: Yes. We've basically got that set up within the BDA at this time, yes.

DR BYRON: It's worth your while to not only pay your fees, but also to comply with the CPD, etcetera, because having that tick from the BDA or being able to put their logo on your office or something, is good for business.

MR WALKER: The fact is with the BDA and being a member of the BDA is just not to be a member of an organisation - there are plenty of organisations you can join - but it's the education and it's also that we're all passionate about this subject, that's why we're here, and the fact is we want to see the industry move ahead. Time and time again you'll go to council or see substandard submissions that go to councils that are drawn by - it may not be a member of an organisation, it may be by an owner-builder that draws it. Yet if it is fundamentally correct, it's got four elevations, a sectional site plan, it's accepted by council and I would like to see that stopped and I think the only way we can do that is through education, through registration. The fact is that whether it be regulated within the BDA or whatever, we've got to do something, because I think time and time again - and I don't think I speak alone here, I'm sure the architects would be the same, that they would be abhorrent - again, the substandard of material that goes across.

I think we need to tidy that up as well. The BDA is an organisation which is teaching members to be up to date with the latest building materials and also be a member of a team and a support group and that's what we are, we are a very big support group.

DR BYRON: You wouldn't mind or you would like to see members of your association who weren't up to standard drummed out of it or told to lift their game and meet the minimum standards?

MR WALKER: Absolutely. It's like I said before, that just because you're a member of the Building Designers Association doesn't mean you're a good designer. I mean, the fact is the only way we can police our own organisation is by educating our members.

MR PURTELL: I just have a bit of a difference in view there. I'm quite passionate about the association being very inclusive of members and encouraging members that would be perceived to be perhaps lacking in areas; that they would be encouraged to do something about that and to improve, and I'm very encouraged that professional development is not just the attendance at a conference, that it is actually taking on board real skills and real improvement in the running of your business. I'm actually very in favour of us working within the association to be inclusive, to raise the standard. Otherwise, if you're just going to - - -

PROF SLOAN: Expel them.

MR PURTELL: You're just doing the same thing as - - -

PROF SLOAN: Presumably - well, we know there's nothing out there in a sense to prevent them.

MR PURTELL: They will still operate and I think there's a lot to be gained by - - -

MR WIEGMANN: That's the point. We could go out as branch members of our respective branches within the BDA and recruit members to our organisation and collect the fees and build up the numbers and make ourselves politically powerful, but we don't do that. We'd like more members, sure, but this state has embarked upon a program of bringing membership quality up and that's been over the last three or four years. I know of incidences where there have been judicial committees formed many years ago to investigate the alleged substandard work of some of the members, and some of these complaints have come from councils in one particular area and that committee deemed to make certain recommendations and act on that, so it's not like we're building up membership for membership's sake and, "Just let's sign up any Joe on the corner." We want quality members.

PROF SLOAN: But you're saying once they're in, it's better to try and encourage them to reach - - -

MR PURTELL: I think it's imperative to improve people's - in the health industry it's no different or, I'm sure, accountancy. If you have a person operating in the trade, it's really important to encourage them to come up to scratch with their skills. I mentioned in there energy efficiency. The University of New South Wales offers a two-day course to purchase the software and learn to use the NATHURS rating scheme and indeed, after that, you come out with an invitation to become a certified NATHURS operator; that's an energy-efficiency operating scheme. That's a hard-hitting course. You go in, it's intensive, you skill up. When you come out, there's the practice of it, but it's a direct help to the performance of the industry. I just feel it's really important that's the approach we need to take.

PROF SLOAN: So you, Michael, are quite keen to see the architects acts rescinded?

MR PURTELL: Yes, I quite openly admit I have a great respect for architects and the work they carry out, but I'm very encouraging of the freeing up of the industry so that it is not restrictive. I openly say to you I provide architectural services and I should be free - - -

PROF SLOAN: But in the non-legal sense.

MR PURTELL: Yes. But I think the level that architects have achieved in terms of their academic training, it deserves respect in society, but I just feel sometimes that the reverse is not the case, that perhaps we're not respected in the endeavours that we have achieved; not only perhaps in learning skills but also in the function of ourselves in the business. Running a business for 11 years, there's a lot of learning that takes place in practice. There is a saying that you don't really learn a trade until you've practised it.

PROF SLOAN: We've got quite a lot of these people - and I probably agree with them - that, "I'm still here, therefore I'm good." That's true for building designers and architects really, because what it's - yes. Can I just go back. It's word of mouth, but presumably customers do some sort of further research on your capabilities? How do they select you rather than someone else?

MR PURTELL: I'd be the first to tell you that I believe the industry is carefully watched by those who want to procure the services of a building designer or an architect. I feel there's a lot of talking that takes place, dialogue, to find out who is appropriate.

PROF SLOAN: Do the builders play a part in that process?

MR PURTELL: I operate more from a client base than a builders' base, so there are differences again in the market.

MR WALKER: To be very honest, the builder - if you build up a rapport with that builder - and developers because it's not just builders. It will be developers who will come to me first and say, "David, I have landed such and such. How many can I get on there?" - blah, blah, blah - and we'll take it from there. So it's dealing not so much primarily with the builder, but with the developer as the development industry and they will get your name from various sources. It may be a recommendation from council staff, for the simple reason though they can't - the fact is they will say, "Well, look, why don't you use such and such?" and that's something which is encouraging, but the council obviously can't recommend us. But it's purely from developers or builders who, as I've said, we've built up a rapport over many years.

PROF SLOAN: What about you, Michael, what do you think? How do you get your work?

MR WIEGMANN: I've had several locations in which I've worked. I used to work in the south-western part of Sydney in the late 70s and early 80s and a lot of the work that I got was a fifty-fifty split between private clients and builders. While I was in the Jindabyne area it was primarily from private people and they used someone local to provide that service, and I got most of my work through the Yellow Pages because that's the first thing they pick up when they start looking for someone local. Now that I've been in the Blue Mountains for about a year and a half, I don't tend to get a lot of private work, being the new kid on the block syndrome. I primarily practise working for a select group of clients who do commercial and industrial work all over the state.

PROF SLOAN: Yes. So you've built up a reputation, presumably.

MR WIEGMANN: Yes.

PROF SLOAN: So you've got a client list.

MR WIEGMANN: Yes.

DR BYRON: Could I just come back to the point that you made, David, about the problem with low-quality plans, designs, documentation, being submitted to council. One of the arguments that's been put to us for the registration of architects is that there are major efficiency gains, if you like, for councils if they see that the documentation has been prepared by a registered architect - you know, it's straight through - whereas if it's not, then somebody in the council has to spend a lot of time going over it and making sure that it's all right. Reaction?

MR WALKER: Well, I can dispute that insofar as just because you're an architect doesn't mean that your standard of documentation is far superior to a building designer. You wouldn't be in business as a building designer and competing on the same level if you were substandard. And as far as council - I think it would be probably better if - it's a shame that representatives of the council are not here to address that, because I think you would find that the average council officer would probably not really care whether it was an architect or a building designer, but providing it was put together correctly and it complied with the codes, that's all he really cares about. But substandard drawings are presented to council, and it could be from a building designer, as it could be from an architect, so it's - - -

MR PURTELL: Could I just reply there, too? I think, conversely, it can be the case from the comment - the example you cited - where architects or building designers could be putting in good-quality work, and they perceive that the council is actually giving quick approval to low-quality drawings, be giving people a hard time, it's - which is most unfair when you've gone to the trouble to document well - - -

MR WALKER: A constant occurrence.

MR PURTELL: - - - and you're given a harder time through council, which is not uncommon.

MR WIEGMANN: I'd like to see a uniform level or standard of documentation put in place throughout council. I know that that's a very, very tall ask, but if you've ever had a look at the level of documentation that's required over in the States for residential design, it's extremely high. We couldn't, under the current scheme of things, get paid for that level of documentation. We'd like to provide it, but the market just would not pay for it.

If it was required - if that level of documentation was required - then building costs would actually come down marginally because builders would know exactly what it was that they had to quote on. A lot of the mistakes that are made in construction are made on the drawing board or on the CAD machine, depending on how you prepare. If you look at it from the point of view of putting this building together while you're designing it, then you'll save the client an enormous amount of money.

PROF SLOAN: We have heard that. But you make the point that they're more

likely to let the plans of a registered architect through without scrutiny compared with others. Were you making that point?

DR BYRON: That was the suggestion, that because architects have been registered and have met minimum qualifications and registration requirements and all the rest of it, that it would be therefore much easier, quicker, simpler, and there would be efficiency savings for councils. That was what we were told but, you know - - -

PROF SLOAN: They might let shonky work through, though.

DR BYRON: Yes. The other point, though, that you're making is that when we're moving towards a uniform national consistency in terms of building codes and standards for design work and so on, it seems to be a step in the opposite direction that a number of municipalities start to impose their own special, unique requirements, so while state and Commonwealth governments are trying to strip away unnecessary red tape, you get new layers of red tape added in at the local level.

MR WIEGMANN: And that happens, and by saying that architects or any other practitioner are therefore better able to - or it's easier for them to get an approval through council because of what they are, or who they are - is a nonsense, because at the end of the day if they spend five years in tertiary education and then two years' practical experience, they come out of that still not knowing what the LEP at Baulkham Hills says about residential flat development or what the width of a carparking space is in the local DCP. That sort of stuff is learnt by going to that council, getting that documentation, and applying it. Now, professional practitioners - building designers and/or architects - are able to read that documentation and apply it. Owner/builders seldom can. Some can, but seldom is that the case.

PROF SLOAN: When plans are submitted to council, though, they know the authorship of those plans always?

MR WALKER: Well, no, not always.

PROF SLOAN: No.

MR WALKER: It's only if, for example, you're operating a company and therefore you would, through another form of advertising, I suppose, indicate your name on the drawings. But just because you submit a set of plans, it is not a requirement - not in all councils - to have authorship, no.

MR PURTELL: There certainly is in the Blue Mountains. You must put your authorship and the contact phone number.

MR WIEGMANN: Which we do anyway. It's just more advertising, isn't it.

PROF SLOAN: I'm sure you would anyway, and I suppose most architects would anyway too.

MR WIEGMANN: Yes, sure.

PROF SLOAN: Thank you.

DR BYRON: I was going to come back to the professional indemnity insurance. I would assume that it would be very difficult to get professional indemnity insurance at a reasonable rate if you couldn't demonstrate some sort of experience or expertise or qualifications. If I wanted to hang up a shingle - you know, Neil Byron Does Buildings - and I went to get some indemnity insurance and they found out I had no qualifications, no experience, never done one before - - -

MR PURTELL: Your point is a very important one. We have only managed to procure professional indemnity - like, only a few years ago it was I think \$2000 a year - what a joke! Because we have formed an association and through time that association has been considered to be, you know, an association of integrity, we have now been offered, through lobbying of insurance companies, brokers - we've been given very competitive rates, so now I would consider - there's really no excuse for an association member not to have professional indemnity. It's quite accessible. I believe the protection to the industry or to the client base that it provides is just so important.

PROF SLOAN: Yes.

MR PURTELL: So your point is a good one. In a way, it acts as a market force, a market regulator, because - however, unfortunately I feel there's some in the industry who don't realise the risk of participating in the industry without professional indemnity. It's just not worth it.

MR WALKER: The other thing, obviously, with professional indemnity insurance, when you apply each year it isn't automatically sent out to you as a renewal. You have to reapply every year to insure. Obviously then they go through the documentation just in case there's been a claim or perhaps a misdemeanour somewhere along the line. So it's not an automatic, once-you-join sort of a - - -

DR BYRON: So you have to give some evidence of what you've been doing over the last 12 months - - -

MR WALKER: Absolutely.

DR BYRON: - - - and that you haven't made any claims or - - -

MR WALKER: Absolutely - and the size of projects, the type of projects, etcetera.

DR BYRON: That is quite a rigorous - - -

MR WALKER: It is. It is. And there can be quite a time lag between the form actually going out and the premium coming back, because they have to do their

homework, obviously.

DR BYRON: So they wouldn't accept me.

MR WALKER: Well, they might.

DR BYRON: For a price.

PROF SLOAN: You're just a frustrated building designer, I think.

MR PURTELL: Your point is a good one. It would be a good one to test. We have been told that we do not have access to these rates in the industry unless we're members of the Building Designers Association, so is that - - -

DR BYRON: Yes.

PROF SLOAN: That is true of the RAIA. One of their important roles is in effect - I mean, all group insurance is cheaper than individual insurance.

DR BYRON: Yes.

PROF SLOAN: So it's another benefit of self-regulation, as a matter of fact.

DR BYRON: Well, that's right.

MR PURTELL: One of the questions asked on the form is, "Are you a current member of the Building Designers Association?"

PROF SLOAN: Yes. And the insurance - I'm a director of an insurance company - the insurance company ends up taking quite a lot of interest in what the association does.

MR WIEGMANN: Yes, and how they regulate their members.

PROF SLOAN: In terms of setting the rates, yes.

MR WIEGMANN: Yes.

PROF SLOAN: Okay. Are there any other points you'd like to raise? I just keep on - you know, it's terrible, I remember talking about false indicators - when I was at university I had this blind professor, and - there is a moral to this story - and I wrote my first essay, a fabulous thing, did a lot of - and I was seen as a good student, okay, so that was my label - you know, architect - good student - building designer. Anyway, so I went along and I started reading the essay - because he was blind - and after about two or three minutes he said, "That's enough" and, you know, gave me an A and sent me on my way. The trouble with that was that I learnt from that process,

and I only ever wrote two or three minutes' worth of essay after that.

MR WIEGMANN: Yes, that's a good point.

PROF SLOAN: Now, I suppose I could have undermined my label - I shouldn't admit that. It probably means I've got a false student record. Okay, look, it's very useful to have you along. Can I just summarise it by saying, let's think about plan B where the title of "architect" is reserved but there is a freeing up of the derivatives. How would you react to that?

MR WIEGMANN: That would be what we'd be looking for.

MR WALKER: I think that's one of the main objectives.

PROF SLOAN: Yes.

MR WALKER: And followed I think thereafter - would be registration of some description.

MR PURTELL: I feel for us to be able to freely use the word "architectural services" or "architectural" whatever is - I mean, for instance, I have a bachelor of science in architecture. To be freely able to advertise that as my qualification which - I'm a bit scared, because that's what I do at the moment.

PROF SLOAN: I think there is no problem if that is actually true; I don't think there is a problem but - - -

MR WIEGMANN: Sorry, I think I might have misunderstood the previous presenter in that he was saying that he wanted the word "architect" to be reserved for architects - - -

PROF SLOAN: Yes.

MR WIEGMANN: - - - but that he felt that people could call themselves architectural draftsmen or designers.

PROF SLOAN: Yes.

MR WIEGMANN: Well, that's not currently the case.

PROF SLOAN: Yes. No, that was plan B part 1, I think.

MR WIEGMANN: Right. Because I've been approached many years ago for advertising as an architectural draftsman, but it's what I do, so I feel that people who are in that industry need to describe themselves as such. It's very important.

MR PURTELL: I have a very strong view, though, that if a person has qualified to be a bachelor of architecture - in other words, they've - then they should be free to use that, provided the market, you know, sees fit, that they're ready for that.

PROF SLOAN: That's actually plan B part 3, therefore. So you're worried about - you think people with bachelors of architecture who haven't necessarily been registered - - -

MR PURTELL: Well, from my comments this morning - I found it most disturbing if a person has a bachelor of architecture - I find it very disturbing that they can't use the term "architect".

PROF SLOAN: No, they can't.

MR PURTELL: I find that very disturbing.

PROF SLOAN: No - not unless they're registered, yes.

MR WIEGMANN: We feel that - well, I personally feel that they should, if they've - - -

PROF SLOAN: Okay, so that is plan B part 3. So no restrictions on the derivatives.

MR WIEGMANN: That's right.

PROF SLOAN: Some legal reservation of title to architects, but some scope for bachelor of architects to figure somewhere.

MR PURTELL: Yes. Also I feel the element of training is important.

PROF SLOAN: Yes.

MR PURTELL: You know, a person trains to be an architect. That has to be an important part of the - you train to be a plumber, you train to be an electrician. Once you're proficient at it, you call yourselves such.

PROF SLOAN: Yes, well, they - the architects - would maintain that you're not proficient until after you're registered.

MR PURTELL: Well, perhaps that's - I mean, if - - -

PROF SLOAN: But I mean, I think the more important point is that you don't object to reservation of title - architect - but would like to see some freeing up of the derivative.

MR PURTELL: Most definitely.

PROF SLOAN: Okay. Thanks very much.

MR PURTELL: I would just like to congratulate the commission on such an in-depth search of the architectural profession. I was just saying before, it has been quite mind-blowing to read the revelations contained herein, and I'd just like to congratulate you on an excellent report, and for the opportunity of being able to appear before the commission.

PROF SLOAN: It's not an opinion that's necessarily widely-shared, but - - -

MR WIEGMANN: Thank you very much.

MR PURTELL: Thank you.

PROF SLOAN: I think perhaps the one heartening thing in the point Lisa made to us - it's not clear that there are many - there's not too much factual material that's contested in the report, it's just the conclusions that are drawn that seem to be part of the argument. Thanks very much. Thank you, building designers. I think we will now break for lunch and commence again at 2 o'clock.

PROF SLOAN: We now reopen the fourth day of the public hearing of the review of legislation regulating the architectural profession on Tuesday, 13 June 2000, held in Sydney. We've got Mr Donovan up here, have we?

MR DONOVAN: Madam, yes.

PROF SLOAN: If you could state your name and your affiliation for the purpose of transcript.

MR DONOVAN: My name is Peter Windeyer Donovan of Lindfield. I am here as a private citizen who, by chance, has relevant experience.

PROF SLOAN: Thanks very much, Peter. What I propose is - we've got half an hour - that you perhaps spend five or 10 minutes going through your points and then we can have questions. Particularly I think what I find useful in your submission is your suggestions in relation to the architects acts themselves, but I know your experience, it's play the part and how you - - -

MR DONOVAN: Yes, thank you, madam. There was in fact a response to my submission by the Board of Architects number 431. I will not reply to that here unless you ask me to do so, in which case I will read out this document.

PROF SLOAN: Look, I don't think so.

MR DONOVAN: I accept this. This is not a slanging - - -

PROF SLOAN: I want you to feel some comfort - - -

MR DONOVAN: Yes, this is not a slanging match, madam.

PROF SLOAN: Agreed. Look, it's your right to say what you want to, and it is an offence to hinder or disrupt the commission or to intimidate a person like you, so I think you can feel protected.

MR DONOVAN: Yes, thank you, madam.

PROF SLOAN: But by the same token I think we want to keep it to - - -

MR DONOVAN: We want to keep to what is relevant.

PROF SLOAN: Yes.

MR DONOVAN: Thank you. I will just for the general edification of the public draw their attention to the existence of a royal commission into building in New South Wales nine years ago. This here is approximately one quarter of their report. What it did reveal was that there are certain unsavoury influences in major building

practices

in New South Wales and there is a problem as to how to deal with them. My own experience is with definitely small building on a private scale, and I will pass totally over this other than it is evidence of the size of the problem as well as the size of the money. I do believe that, if you like, keeping architecture honest is one small way to discourage repetitions of the practices which are described by Roger Giles QC in this report, and I commend that report to the commission.

My background was a small building job, an outbuilding, on my own property 10 kilometres north of here started in 1991. It was an architect-administered job. The end result was that the builder was delicensed in a proper judicial hearing. The building was declared to be structurally unsound with an amazing number of defects in it for a building of its size and it was replaced at the expense of the Building Services Corporation insurance. I am a married man with children. I handled this in my own incompetent way without enough professional legal advice and my family suffered, though we are still together I am glad to say.

Being an academic with various connections I have taken some interest in the issues that arose out of this. My wife was appointed to the state Home Building Advisory Council and through her I have kept fairly well informed on the problems with residential building. At this stage I will deny any further interest or knowledge about commercial building and get to the point.

PROF SLOAN: Could I ask you a threshold question: do you feel that the Architects Act in this saga provided you with any additional consumer protection beyond that which you got?

MR DONOVAN: My feeling is that the Architects Act, as it stands, gives an illusion of consumer protection rather than a reality, and I would press that any consumer protection must be very definitely real. It is not the function of the state to give a false feeling of security to the customer or the consumer and, of course, if you abolish all consumer protection you are at least ceasing to give any false feeling of security.

PROF SLOAN: Can I just draw you out on that. We do make the point in our report that perhaps one of the negatives is that some consumers might draw some implication of a government guarantee of quality from the operation of the architects acts and the Architects Board when in fact there are no such guarantees.

MR DONOVAN: Indeed, madam, with the Building Services Corporation and its predecessor the Building Licensing Board, there were a group of people who said that they had been misled by the consumer protection, or the lack of it, and they thought they had it, and in the end the state government did award compensation in about 20 to 40 extreme cases; we were not one of them. We got the compensation ahead of that investigation which was, I think, called the Crawford Investigation. But ultimately if one of us drops dead because some fool throws a brick from a tall building it's a private matter; if a lot of us get killed due to bricks being thrown from a tall building, we'll all blame the government.

PROF SLOAN: Very true.

MR DONOVAN: Yes. So this, you may say it's true; of course it's true, but it's also somewhat irrational too. So basically - - -

PROF SLOAN: Without going into the details of your case, we would like to hear I suppose a precis of your experience in trying to access the Architects Board and whether you felt the ease of that process, whether you felt that was a worthwhile thing to do.

MR DONOVAN: It was necessary because of the lack of other things to do, but going through such an exercise is not something you do unless you are coldly rational yet hopping mad.

PROF SLOAN: That's an unusual combination.

MR DONOVAN: The provocation has to be extreme. Also gradually I was becoming better equipped with the law. But the issue was clouded by the fact that one member of the Board of Architects at an earlier stage had written out an affidavit saying that the report by my expert - that the building had no piercing to bedrock and needed it, was wrong. This affidavit said there was such piercing and the building was sound. I did in fact complain about this particular member and did not get anywhere with it.

But we have one particular problem of what to do with expert evidence. This Board of Architects was presented with affidavits from my consultant and from the BSC inspector; it preferred the affidavit, which may not even have been signed, by yet another architect. There was no cross-examination allowed, no photographs allowed and, above all, no inspection of the buildings. You see, with cases of alleged sexual assault or something the evidence goes away very rapidly with time, but with buildings the evidence stays put and so, unlike most cases, you can examine a building for whether it's got foundations at your leisure, and in this case the delicensing authority accepted the evidence of two engineers and an inspector and my man that there were no foundations, and they were essential; indeed, the Board of Architects ultimately accepted this too.

PROF SLOAN: Really what you're saying, it's a process that has some - - -

MR DONOVAN: Fundamentally flawed, and I repeat - - -

PROF SLOAN: Is it partly because - - -

MR DONOVAN: It is flawed in two - - -

PROF SLOAN: - - - the architects are dominating the board, and in fact they may even be architects with interests in the matter?

MR DONOVAN: I don't wish to assign motives, madam, but essentially there does need to be - well, in any building dispute I think inspection of the site is just so necessary. This is partly because a building like this one is made up of literally millions of minor processes, no doubt some of them better than others. But a friend of mine, who holds a senior judicial officer, in fact has said to me privately that the best way of hearing building disputes is to allow written submissions only from both sides and then have an inspection of the site by someone who understands how a building should be built and also has the documents in front of him.

PROF SLOAN: So some agreed expert witness?

MR DONOVAN: No, basically the judge or whatever would be actually assessing the building on the spot but with submitted documents; anything else is, I think, basically a travesty. Now - - -

PROF SLOAN: If I cut to the chase, Mr Donovan, as I understand it most of your claims were either dismissed or held to be - is the term "vexatious and frivolous", that one of your claims was held to - - -

MR DONOVAN: Yes, I've referred to the fact that I, like necessity, know no law, but with the architect principally responsible not knowing what to do I wrote out some - well, about eight or nine complaints all based on the same material facts in the end but expressed in different ways; one of them got up. There were slight differences, but it struck me that putting in numerous complaints and seeing how they go would be the way for an amateur to do it. This is not what the crown prosecutor does with criminal cases, but no-one has offered me the job of being crown prosecutor.

PROF SLOAN: Is this because it's not particularly user-friendly to make a complaint though?

MR DONOVAN: Well, certainly the simplest of brochures about how to handle architects complaints would most definitely have helped. So you have in my submission, madam, a list of - well, a few quotes from judicial sources on the law of these matters; printing out a few of these showing what needs to be done would do no harm. It would also definitely do no harm to have Board of Architects hearings open to the public when, damn it all, that's what the architects regulation of New South Wales says they shall be. The Board of Architects itself said they had difficulties with publishing the results of their inquiries into cases. I think they are perfectly correct, and that one needs to be corrected.

PROF SLOAN: So the public doesn't know if architect X has been reprimanded. Is that what you're saying?

MR DONOVAN: How can they? You get a letter in your letterbox saying the decision - if I told the people here present what had happened, with you mentioning

names, it would be defamation.

PROF SLOAN: So in your case one of your complaints was upheld and the architect was reprimanded.

MR DONOVAN: One against the architect principally.

PROF SLOAN: And the builder - - -

MR DONOVAN: Was upheld.

PROF SLOAN: - - - was delicensed.

MR DONOVAN: The builder was - - -

PROF SLOAN: Which sounds quite serious.

MR DONOVAN: - - - delicensed. The complaint against the member of the Board of Architects who gave this evidence, if we may call it that, was knocked back. And there was another architect marginally involved, and perhaps the decision not to allow complaints against that architect to proceed may well have been correct. I was using axe-handle techniques here in going for these people, due undoubtedly to my ignorance of the law.

PROF SLOAN: Well, except you're not uncommon - you'd have that in common with most users of architectural services.

MR DONOVAN: I am not in fact somewhat of an expert on the underpinning of small buildings, I am fairly well informed about the laws of registration of professionals, and all of this has emerged since 1991, and I would - - -

PROF SLOAN: So to sum up, how did you feel with - I mean, can I ask two questions. It seems to me that you weren't very satisfied with elements of the process, indeed, or the outcome. Is that right to say?

MR DONOVAN: I believe that the reprimand, which was all this fellow got for allowing a building - - -

PROF SLOAN: A private reprimand.

MR DONOVAN: A private reprimand.

PROF SLOAN: Yes.

MR DONOVAN: It was quite inadequate for allowing a building to be built without technically essential foundations.

PROF SLOAN: Right.

MR DONOVAN: Indeed, you might think that other faults in this building are basically irrelevant if the foundations weren't there. So that is the first thing. I believe then that there are some things which can be done to put the matter right, if we are going to continue to have registration of architects. I would like to submit, madam, that you should have in your report some statement about what form registration should take if we are to continue to have public registration, and this is the substance of my submission to you.

PROF SLOAN: Yes.

MR DONOVAN: Could we then - - -

PROF SLOAN: Can I just, before we go on to that - you've got in your submission that there have been 23 complaints in New South Wales in five years - 23 complaints to the Architects Board, and I think probably only one or two of those have led then to deregistration.

MR DONOVAN: I cannot comment on the total score. The 23 complaints in five years was the Board of Architects figures - - -

PROF SLOAN: Saying that - okay.

MR DONOVAN: - - - supplied to a state inquiry that got terminated in view of the imminence of this inquiry.

PROF SLOAN: Okay. Well, let's just assume for a minute that that's about the figure. I mean, one hypothesis is, the system is working extremely well and this looks like a - you know, given the size and scope of architectural services, only 23 complaints in five years - we, the commission, therefore should conclude that the system is working well and the fact that there have been so few deregistered also means that it is working well because people value registration and they wouldn't do anything to jeopardise it. Now, the alternative - and that's why your submission is important - is that it's not that easy to make a complaint, is it?

MR DONOVAN: It most certainly is not, and although I have education equal to anyone else's in this room, I found it quite difficult. Although I am the son of a solicitor, I found it quite difficult.

It is not something one even commences without, as I say, extreme provocation; it is as simple as that.

PROF SLOAN: So someone who seeks a commercial remedy through other means, would you think there is a great incentive to then proceed on to complain to the Architects Board?

MR DONOVAN: Residential buildings in New South Wales in those days had state insurance and now it has commercial insurance, so one is ultimately trying to get money out of nowadays a commercial insurer. In the old days, if we may call the early 90s that, one was trying to get money out of the state, and some various people used various mixtures of political and legal means to do this. The state in paying out those 30 or so Crawford cases was admitting that this was totally unsatisfactory.

PROF SLOAN: Can I just also be the devil's advocate - and I don't want you to take offence in this - but people would say, "Well, you know, one in a thousand clients, you always get some grumpy, difficult-to-please person and you're it."

MR DONOVAN: Yes, madam, it was my building that was structurally unsound. That gentleman's building was stable; he doesn't mind. It is of course ultimately a matter of chance. This was more or less by chance about the worst possible place you could have for building a small concrete slab building without proper piling. I didn't know that in advance but, yes, one raises Cain when one feels provoked.

PROF SLOAN: Right.

MR DONOVAN: Could I now move to - - -

PROF SLOAN: I don't mean to give offence.

MR DONOVAN: No. Could I then just move to some specific things which I believe should be covered.

PROF SLOAN: Yes.

MR DONOVAN: The first of them is in this submission, perhaps it's a bit obscured. This is at the end where it comes to integrated development assessment, yes. It appears that we are moving in New South Wales to having private certification of whether proposed buildings satisfy the council requirements. This has led to a situation where the customer can choose the architect or consultant, who writes out the certificate needed; off that goes to the council and the building is then assumed to be fine.

I have mentioned this Department of Urban Affairs and Planning white paper of 1997 - this is on page 10 of my document, line 7 - where one has private certification. The question arises - what if this private certification is wrong? What is the comeback? In a case known to me, a private architect certified that a building, together with associated concrete tennis courts, amounted to 59.9 per cent of the land site being concreted over, whereas the municipal maximum was 60 per cent. I don't believe that this figure was correct. The problem which is relevant here is what comeback does the council, for example, have against the architect who signed this allegation? I don't believe this would be covered by the present Architects Act. It perhaps is a matter for the New South Wales act which covers this self-certification. I leave this with you as somewhat of a problem and you might think it's a bit

marginal

to your inquiry, but there it is. So that is one issue.

I do specifically comment then that if we are to have registration of architects we have to have national registration de facto, which can be done quite easily. I will produce one object here, which is a New South Wales driving licence at first sight. It is nowadays under the reciprocal arrangements an Australian driving licence which can be lost by bad driving in another state. It's not that hard to fix up, and this has been done.

PROF SLOAN: Over many, many decades I might add, but, yes, go on.

MR DONOVAN: Yes, well, nine decades since federation and we got it right sometime in the 90s, didn't we?

PROF SLOAN: Yes, we did.

MR DONOVAN: So there it is. But there is a clear precedent. I am saying that if we are to have registration of architects we must clarify the list of things for which deregistration is permitted, and I list these on page 2; the first one has to be "false or misleading evidence to any tribunal, court or the like". This then might be implicitly in the act anyway, but apparently it was not in the case which I mentioned.

The second one is "issuing any certificate for the payment of money for building services without having verified with due care and skill that all conditions for payments had been satisfied in that the work had been done with due care and skill". This you might say should be self-evident.

PROF SLOAN: That's what architects do.

MR DONOVAN: Yes, thank you, but you have perhaps not had the pleasure of looking at the RAIA practice notes and legal acts, legal notes rather, which do not help in interpreting what architects should do, I'm sorry to say. I believe that the matter should be clarified by statute; in fact, issuing certificates for the payment of money is already covered by the state's Crimes Act. It's a serious matter.

The next one is "recommending any form of building contract not in the best interests of the client". Now, here we have had, I believe, collective unprofessional behaviour rather than individual unprofessional behaviour, but in particular with residential building work in this state there were these arbitration contracts, as they were called, with disputes being referred to arbitration around in New South Wales and these were fundamentally at odds with the state insurance scheme and it created problems all over; in fact, in Queensland and New South Wales such arbitration clauses have been rendered void by law and responsibility for this reform is in fact due to the Donovans as much as anyone, and I draw your attention to the speech made by the president minister for agriculture, Richard Amery, in the legislative assembly some five years ago where he - it would have been six or seven years ago, but he undertook that a future Labor government would do this. He read a

submission from me and he

- well, that undertaking was honoured. Here, as I say, its two insignificant private citizens appear to have got more reforms up than the state Board of Architects has done in 80 years.

The next thing is "failing to specify any part of a building contract in sufficient detail to protect the best interests of the client". This again you would say is self-evident, but after you've waded through the first hundred pages of the RAlA practice notes you begin to think nothing is self-evident any more. I would believe that putting these in would have no fundamental consequences affecting major court cases in the future but would at least assist all courts and hearings with minor disputes.

The next one is the issue of professional indemnity insurance. Currently professional indemnity insurance is in the name of the architect and it dies with the architect. Essentially then the customer using an architect would be well advised to use an architect with a long life expectancy so that the professional indemnity insurance is available. This is easily fixed if professional indemnity insurance is made job specific, and I would put a time limit on it, and it's a matter of taste - 10 years or 15 years, hold a straw poll if you like, but - - -

PROF SLOAN: I don't think there's too much dispute about that one really.

MR DONOVAN: Right, so the - - -

PROF SLOAN: I think everyone sees professional indemnity insurance as being part of the professional service offered.

MR DONOVAN: Yes, perhaps also if you hold a straw poll you could ask if anyone has ever bothered to ask a dentist for his professional indemnity insurance; of course you don't until it's too late. Thank you.

The next thing, madam, is that there has unfortunately been inflation beyond measure since the fines imposed by the Architects Act were put down as a hundred pounds. Essentially you need to update the fines to something more realistic like 50,000 of our present-day dollars. Then if you do something like this you get the Board of Architects to bring out a simple booklet for interested customers or interested complainants and certainly get on-site inspections if a defective building is relevant. You would get a mechanism which would I think be more worthy of being taken seriously.

PROF SLOAN: I think it's very useful. I think that from the point of view of a consumer you've given it a lot of thought. Neil, did you want to ask some questions of Mr Donovan? I mean, I think tightening up the grounds for complaint. It's interesting because, not that you would have bothered, but in some states being an incompetent architect is actually not a reason to complain under the act.

MR DONOVAN: I dispute that in a sense, madam, because I also make the point

that the act does mention a breach of contract as being grounds for complaint. Under the Fair Trading Act of this state, which complements the federal Trade Practices Act, any contract contains a warranty of due care and skill.

PROF SLOAN: Yes, I think that's absolutely right.

DR BYRON: The suggestions that you've made for substantial improvement in the status quo are all in the context of I think retaining statutory registration.

MR DONOVAN: Yes, sir.

DR BYRON: Do you have any comment on the extent to which the same or similar objectives could be achieved through a self-regulatory system?

MR DONOVAN: I do, sir, and this is fundamental. A public body like the Board of Architects can within reason be the object of political debate. A private body is much more difficult to discuss. So for example, although I have no knowledge of the disciplinary procedures of the RAIA I would be very loathe to criticise a private body like the RAIA like I have been criticising undoubtedly a public body. The Board of Architects has functions rather than rights. The Institute of Architects is a private body which has rights but not functions, so in general I would say that registration should be a matter for the state.

Unfortunately here I'm not in a position to give any evidence on how the state professional - what is it, Professional Registration Act?

PROF SLOAN: Professional Standards Act.

MR DONOVAN: - - - Professional Standards Act rather, apologies, has been working, and perhaps if you wish to pursue this line of questioning you should ask some other person how the New South Wales Professional Standards Act has gone in practice.

PROF SLOAN: I think we're out of time, Peter, but I reiterate my thanks for putting the time in with your submission. We find what happens with these kinds of inquiries is that the more directly interested parties tend to spend the time writing submissions but consumers particularly tend not to, so thank you very much, and also thank you very much for those thoughts about how we might think about improving the system. I'm not sure they'll go for the \$50,000. Have you worked that out as the rate of price inflation that equates you \$200 to the current price?

MR DONOVAN: I feel perhaps a little jaundiced on this subject, but - - -

PROF SLOAN: I suppose the point you're making is that you have to make the fines significant.

MR DONOVAN: Yes, in New South Wales nowadays fines are expressed in

penalty units which are adjusted for inflation.

PROF SLOAN: Yes.

MR DONOVAN: That is why the penalty for speeding can be \$143.29 or something.

PROF SLOAN: Our legislation now is - - -

DR BYRON: Penalty units.

PROF SLOAN: Yes. Thanks very much.

MR DONOVAN: Thank you, madam.

PROF SLOAN: Have we got now the representatives of the Association of Consulting Architects, New South Wales branch? If you could state your name and your position and your organisation for the purpose of transcript that would be helpful.

MR McEWEN: Richard McEwen, president of the New South Wales branch.

MR SLINN: David Slinn, treasurer of the New South Wales branch.

MR SKINNER: Lindsay Skinner, executive officer of the New South Wales branch.

PROF SLOAN: It would probably be helpful to us for you to explain to us what both consulting architects are and what is the Association of Consulting Architects before we go any further.

MR McEWEN: All right, I'd like to explain that. The Association of Consulting Architects is a group of really the employers of architects, is the main thrust. Our main sort of principle is to look after the conditions under which employers employ the architects, such as awards - we've just currently gone through a whole series of agreements with the unions on a new Architects Award - conditions of engagement by clients, the sort of contracts that major projects produce such as between big building companies and the architects or big development companies and the architect, conditions that are in there in terms of a commercial nature that architectural firms get caught into or problems that they get caught up with.

PROF SLOAN: So you're not just an industrial association.

MR McEWEN: No, not at all.

MR SKINNER: There are certain areas - - -

PROF SLOAN: So who are your typical members?

MR McEWEN: Typical members are large architectural practices in Sydney, in New South Wales's case. The major firms in Sydney are nearly all members. The majority of members are probably smaller. They're probably in the order of two to five-man practices, so it might be one principal, four staff in a firm, but generally ones that are employing architects tend to be members; they don't have to be. They can be a sole practitioner and no staff, but I guess the main emphasis is the larger employers of architects.

PROF SLOAN: So what's the consulting bit? That's just - - -

MR McEWEN: Consulting is providing architectural consultant services.

PROF SLOAN: So you could easily be called - why are you not called the Association of Architects?

MR McEWEN: I don't know. It was done before I got around - - -

PROF SLOAN: Thank you, right. No, I just wonder whether we're missing something here, that consulting architects are different from architects.

MR SKINNER: In the 80s there existed a body known as the Practising Architects Group, which was part of the Institute of Architects, and in the mid-80s the Practising Architects Group became the Association of Consulting Architects and there was a name change, I think for the purposes of industrial registration, but nonetheless we work with the institute. We adopt the institute code of conduct and disciplinary procedures, etcetera.

We have 200 members in New South Wales and the ACT. That's about 22 in the ACT. There are about 35 major practices. We've got about 35 sole practitioners, and the remainder of our members are in that medium-sized firm, which is - - -

DR BYRON: So would all of your membership also be members of the RAIA?

MR McEWEN: Couldn't say all, but a high proportion.

MR SKINNER: Couldn't say.

MR McEWEN: Most would.

PROF SLOAN: So are you the BCA of architecture?

MR SKINNER: No.

PROF SLOAN: The Business Council of Australia? No.

DR BYRON: The big end of town.

MR SKINNER: No, I think it's important to distinguish - the RAIA is about individual membership.

PROF SLOAN: Yes, you're a company membership.

MR SKINNER: We're about company membership.

PROF SLOAN: So I don't understand why you aren't the BCA of architecture. I mean, they've got company members - - -

MR McEWEN: It's not a bad analogy.

PROF SLOAN: - - - and tend to be the big end of town.

MR SKINNER: No, we're not the big end of town; it's representative. But I think there are some important distinctions which - I've been in the job for six years and I realise that there are lots of things for example - working with either the Board of Architects or the Institute of Architects, that there are things that because of the membership of those bodies being individual and particular they can't cover everything. So for example we have a clear mandate - and are in a very much more comfortable position when it comes to dealing with government, for example - that we can speak with a completely different viewpoint because none of our members are by definition employed by government. So if you like, we can speak very plainly to government because we represent, if you like, private practitioners, whereas the institute has an inhibition, if you like, on the way it can go about things by its membership spanning employers, employees, be they public or private.

PROF SLOAN: That's fine. So who wants to lead the discussion?

MR McEWEN: I'll start, if I could. The first issue I want to talk about is the relevance I guess of the Architects Act to us as companies. One of the main things I guess is that we employ obviously a range of people. We employ other architects, we employ architectural draftsmen, architectural technicians, landscape architects in some instances, planners and the like, so we actually do employ a lot of people out of a lot of areas, even project managers who are employed by some of the firms.

MR SLINN: Even engineers.

MR McEWEN: And engineers, yes, I think, exactly. So I guess we've got a lot of staff and members that we actually are looking after. The issue that concerns us most that's been raised is the fact of actually taking our architectural practices overseas. The big firms that we do represent obviously do millions of dollars worth of work overseas. We're currently on a bit of an incline in work that actually is currently being done at the moment overseas and I think we've got to be very, very careful that there isn't an impact out of this inquiry on that work.

I've got to say personally my own firm hasn't actually struck the situation where we've been really interrogated about our registration as architects. We're currently doing work in China and Singapore and I can say in neither case were we asked to actually provide our credentials as architects; they took it as read. It was a bit like you were saying, Dr Byron; that they just read you as the firm and that's it and they accept that you're here practising, you've got a reputation and you're right.

DR BYRON: Presumably they knew your reputation.

MR McEWEN: They knew it, yes. So that happens. Now, in those two instances, and I know in a lot of cases of the other larger firms, architectural firms are going into Asia in particular just doing the design component only, and when I talk about

design

I really do just mean the design component, coming up with the design, the concept, working it up from there. Then in fact a local company will actually document the project and see it constructed, so it was a very clear role. They won't let you operate and document that project in their countries. In China for instance there are institutions that actually do that, and I think there's only one Australian company that is actually registered in China to do that and I think they had to spend a lot of time to get to that position, despite any registration understanding or anything like that. It is a hard road to get into those countries to actually do the whole job.

In our experience in Malaysia - and I know a lot of other firms have had the same - you had to have a minimum 30 per cent BOOME partner, which seemed like giving away half your business. Now, that's the only time we've actually been asked about our registration; when we actually set up as a company that was the only time we were asked to produce our registration as architects.

PROF SLOAN: Although your firm is not registered. Is that right? The New South Wales law doesn't provide for a registration of a company.

MR McEWEN: It doesn't, but the partners of the firm are - - -

MR SLINN: But it does provide in the use of the word "architect" - you know, use that as a - - -

PROF SLOAN: Yes, but in some other states the companies are also registered.

MR SLINN: Queensland.

PROF SLOAN: So you don't need that obviously to work overseas.

MR McEWEN: It's not immediately asked for, but I wouldn't want it to become a problem for any of our firms going into Asia if they thought there was some problem with the registration of architectural firms here.

PROF SLOAN: But you shouldn't think that these joint venture arrangements and impositions are confined to architecture. This is true of just about everything. If you want to go and do work in Asia, particularly in a service sector, you have to joint-venture with the locals.

MR McEWEN: Yes. I mean, you can - - -

PROF SLOAN: I don't know quite what then is so special - - -

MR McEWEN: It's the concern of whether - - -

PROF SLOAN: - - - about architecture, because accountants and engineers are doing work through Asia.

MR McEWEN: No, it's just that it's been raised here this morning certainly by a number of people, that in fact you actually had to have an Australian registration with the Board of Architects to be able to do any work overseas. I don't necessarily think that's totally true because you can do it in association, so you're using the local's registration to get your approvals. But if you were trying to do it totally on your own, I think then you would.

PROF SLOAN: All I'm saying is that it's most unlikely that you would be allowed to do it all on your own in those countries you've cited, because there are more general rules. I know from my own experience that you have joint venture, otherwise you're not in at all. It's a valid point and it's one we're very interested in and people with overseas experience - I think it's important that we hear about it.

MR SLINN: I might just add a comment at that point. We're actually also looking to do work in the Middle East.

PROF SLOAN: Yes.

MR SLINN: That's a culture that's a very formal culture and they do place some degree of reliance on those sort of issues, perhaps more so than we might in our own culture, but they do look on those sort of issues as important.

PROF SLOAN: Is it a bit of an issue, though - I mean, I know we're not in Tasmania, but it seems to me that if I went along to someone in the Middle East and I'd say, "Look, I'm a registered architect of Tasmania," they'd go, "Great," you know. Whereas it seems to me that it would be a very much stronger label to say that I'm a registered architect of Australia.

MR SLINN: I couldn't agree more, absolutely.

PROF SLOAN: So it's not a perfect system at the moment.

MR SLINN: I don't think anyone would say the current system is perfect, no.

PROF SLOAN: Sorry to interrupt.

MR McEWEN: We actually had a discussion at our committee meeting a week or so ago and the other issue probably is the impact of running a company in Sydney requires us under the current act to in fact have our board members as architects, a certain proportion of those as architects. It's interesting to note also that the landscape architects require exactly the same thing. To actually call yourself a landscape architect firm also requires you to have a person, a principal, as a landscape architect.

PROF SLOAN: That would not be legally enforceable, I don't think, because they're not a statutory registered - so that can be their rule of their association.

MR McEWEN: It's the rule of their association, yes.

PROF SLOAN: Are you in favour of those ownership restrictions?

MR McEWEN: There's difference of opinion. Even sitting here, there's difference of opinion.

PROF SLOAN: Okay, we'll keep going.

MR McEWEN: I am.

PROF SLOAN: Because there are some that are absolutely wedded to it and others that see this as a second-order issue to the point where in fact it's probably cutting off other innovative corporate structures.

MR McEWEN: It does water down the professional synergy of the firm if you start bringing a whole lot of outsiders into the company.

PROF SLOAN: With money, people with money.

MR McEWEN: Probably with money and things. But I think to actually perform the task that you're doing, which is architecture as we're talking about, one would expect that you've got a fairly good understanding of the practice of architecture to be in there running a business. You might have one or two directors, say, from outside providing good commercial sense, accounting sense, whatever, as well, but I think the idea of having some or the majority being principals with the right sort of training is a good policy.

PROF SLOAN: I'm surprised you say that. This seems to me like an anachronism because surely the aim of the reservation of title is to make sure that the person providing the service is an architect and has that training, qualification, experience. It's got absolutely nothing to do with the ownership of the firm. If someone comes along and offers you a couple of million dollars for your firm, you won't be able to take it because you've got to have majority ownership.

MR McEWEN: There have been ownerships of firms - you know, public ownership.

PROF SLOAN: Yes, New South Wales is of course a bit different again.

DR BYRON: It couldn't happen in some of the other states, though.

PROF SLOAN: No. It's an interesting point because when we went and talked to some of the big firms, one of the things that's happening is that increasingly some of the more detailed specification work is being done overseas via the Internet, so there are the ideas and some of the plans and the like, but some of the detailed work is

being done in Bangladesh and Thailand and the like, and I said to the partners of these big firms, "Well, I suppose you wouldn't do that." Yes, they do. They were quite keen on this idea. When I'm thinking of the public accountability and stuff, they think they're getting the services of a registered architect, but in fact that registered architect is subcontracting some of the activities off to someone else. Is that okay?

MR SKINNER: They're still responsible, they still review the work.

PROF SLOAN: Okay. Do you think they should disclose that to the client?

MR McEWEN: I think it can be a vexed issue and I have particular - - -

PROF SLOAN: Here we have these little local domestic architects acts and yet all these things are happening.

MR SLINN: I think it's just a question of responsibility and ownership.

MR SKINNER: But there's no doubt that the work has to be done, I believe, under the proper care and supervision of an appropriately qualified person and that's about as far as you can go and that's obviously tainted to some extent by personal experience. My practice, for example, in 1981 when the Victorian Architects Act changed, in terms of shares, the place was owned by architects, but in terms of numbers of owners, because the architects had big packets of shares and the engineers had little packets of shares, it didn't work, so I mean there were all sorts of quite artificial arrangements had to be arrived at to comply with the Architects Act as it was changed in 1981 in Victoria. I don't think it made any difference to the product.

PROF SLOAN: Artificial arrangements don't sound all that attractive, do they?

MR SLINN: No, they don't. The current system does force you into certain arrangements to try and fit within the particular rules in each state, there's no question.

PROF SLOAN: No, I'm being the devil's advocate deliberately. When you hear now of all this use of the Internet and getting the plans done cheaply offshore and stuff, does it make little state-based regulation look a bit silly and trivial?

MR McEWEN: No, I think the responsibility has ultimately got to stay here. The architect here or the qualified person has to make sure that those specifications and drawings or whatever they've been getting from overseas are appropriate and work here.

PROF SLOAN: So when I write an article under my name and I've used a research assistant, as long as I acknowledge that the research assistant has helped, but I take responsibility, is that the parallel?

MR McEWEN: Yes.

MR SKINNER: But I think there's an analogy in that. Working within an architect's office are all sorts of people and it would depend on the practice whether they were mostly registered, but typically, I would say - well, Rick's office I know reasonably well. There are a lot of people in that office that aren't registered architects, so he's got draftspeople and technicians, but that's typical of architects' offices. The work, however, I have absolutely no doubt, is done under the direct care and supervision of highly-competent and effective architects.

PROF SLOAN: Not here, because you're all a very courteous and friendly lot, but in some of the other states, we've got the impression that the font of all knowledge, wisdom and competent practice resides only with registered architects.

MR SKINNER: I think we've all worked with people who are unregistered architects who are very very good at it.

DR BYRON: On the subject of the ownership restrictions, in the commission we had a similar debate in a different context with regard to the regulation about pharmacies, where in just about every state it says the owner of the pharmacy must be a pharmacist. But there is one interesting experiment, if you like, and that's in the ACT, where anybody can own it as long as the person who actually manages and dispenses is fully qualified and up to date and so on, and the interesting thing is that in the last nine years of this, there hasn't been a single problem in the ACT, which sounds like - after nine years of experience with this policy experiment, you wonder why it's still considered absolutely essential in all the other jurisdictions that if the owner of the shop isn't a qualified registered pharmacist, then he's going to be a drug dealer or something else.

MR SLINN: New South Wales currently has no restrictions on ownership.

DR BYRON: But I think, David, in your submission, you describe your practice as multidisciplinary.

MR SLINN: It is indeed, yes.

DR BYRON: But it's still basically majority owned by registered architects.

MR SLINN: The majority of our practice is architectural.

DR BYRON: But in other jurisdictions, "multidisciplinary" might mean more engineers or surveyors.

MR SLINN: It could, yes, or in other circumstances or it could change in the future.

DR BYRON: And not necessarily with a majority of architects.

MR SLINN: Correct, yes. And I acknowledge that some degree of flexibility - ownership is not a problem because there are no regulations in New South Wales.

PROF SLOAN: So that's a second-order issue.

MR SLINN: But there are still issues in relation to constructing boards and what have you. From my perspective as a multidisciplinary firm, to have increased flexibility is helpful. Clearly you're always going to ensure you have the right people to do the right job.

PROF SLOAN: We heard from some of those big firms the frustrations of registering in a number of states, because they all have slightly different rules, so they go through this - do cartwheels.

MR SLINN: Exactly. I mean, we have to have a separate structure in Queensland to operate in Queensland.

PROF SLOAN: Presumably you're not going to die in a ditch for that stuff.

MR SKINNER: No, but we're a victim of the constitution, aren't we, in that the Commonwealth - - -

PROF SLOAN: Or the happy recipient.

MR SKINNER: Or the happy recipients. But the Commonwealth has no jurisdiction over the registration of architects, so we've got this highly crappy state registration system which, despite - - -

PROF SLOAN: Which you want to keep.

MR SKINNER: No, I don't think that's true at all. There have been some comments, I think, that are worthwhile, but it is a real frustration that they're all different.

MR SLINN: I would support a national scheme and we have had to create a structure in Queensland that we wouldn't have, except for state-based regulation.

PROF SLOAN: What about the preservation of title and the derivatives? What is the association's view on that?

MR McEWEN: We're not holding a very hard line about it. We certainly want the name "architect" kept in very much its same sort of position and we'll go on to that in a bit more detail later. We're quite happy that other people can actually gain that title by actually being accredited to have achieved that level. I think that keeping the name and keeping the name in the public as "architect" and they see that the title "architect" is somebody who has reached that level of competency is fine - not really

caught up in

the issue that you've had to have done five years at a university and done your two years and done it the traditional way.

PROF SLOAN: So you see it in this competency framework?

MR McEWEN: Yes, competency framework, very much so.

PROF SLOAN: What about the derivatives?

MR McEWEN: I am concerned about the use of the word "architectural" - "providing architectural services". I think that would be confusing because if you are not an architect in competency standard offering architectural services, you could be seen to be holding yourself out to do so.

PROF SLOAN: But what about these people like in your firm that they're bachelor of architecture, they work as architects, they're not registered as architects, so it's illegal for them to call themselves "architect" and it's illegal for them to say they deliver architectural services?

MR SLINN: They work for the firm and the firm can deliver architectural services.

PROF SLOAN: Yes, but don't you feel a sense of unease about that arrangement?

MR McEWEN: Under the current situation, if you're doing a government project, for instance, and the government has asked for an architect to administer that project or be working on that project, we have to be very careful that we actually give them a registered architect.

PROF SLOAN: Yes, but don't you think that this is actually a funny system?

MR SKINNER: I think it's quite a normal system.

PROF SLOAN: A normal?

MR SKINNER: I think engineers are the same. There are all sorts of people who work in engineers' offices, who aren't engineers.

PROF SLOAN: Who have a bachelor of engineering degree and don't call themselves "engineers"?

MR SKINNER: No, there are all sorts of people who have - - -

PROF SLOAN: No, I'm talking about people who have a bachelor of architecture, who work as architects in the non-legal sense, but they can't call themselves architects.

MR McEWEN: We have lots of them.

PROF SLOAN: And you have lots of them.

MR McEWEN: As you were saying, we have lots of them and we actually try and encourage them to go and get registered and they say, "Why should I?"

PROF SLOAN: Okay. But don't you just from a moral point of view feel that they are very badly done by this system?

MR McEWEN: There is not much for them to do. I've got people there who have got 20 years of experience, have got an architectural degree. All they have to do now is go and have a chat and tell the board what they've been doing and it's been logged. They've got buildings that they can walk around and show them. Totally capable, totally competent, should be architects, no question. Not much for them to do, but they just choose not to do it.

PROF SLOAN: I wonder whether this is actually confusing for people, confusing for the public. I wonder whether around the dinner party they say they're architects.

MR SKINNER: Yes.

MR McEWEN: Probably do.

PROF SLOAN: Illegal.

MR SKINNER: Once again, personal experience - it's amazing how many people you meet, when they find out you're an architect, they turn into a draftsman because they're well aware that there is an Architects Act and they can't describe themselves as an architect. So, for example, my wife might have a conversation - and did have a conversation - with a neighbour who described herself as an architect, but when she spoke to me a couple of weeks later, lo and behold she wasn't an architect - because she wasn't.

PROF SLOAN: These people of course do have architecture degrees, so they've got a - - -

MR SKINNER: Indeed, yes.

PROF SLOAN: - - - sort of perhaps even stronger case.

MR SKINNER: Yes.

MR SLINN: I think that's true with other professions. You'll find accountants working for chartered accounting firms who aren't chartered accountants - you know, it goes on. People have done degrees but haven't done the extra step in registering or

qualifying or whatever it might be.

PROF SLOAN: Yes, but there's no reservation of title under the law. Anyone can call themselves an economist. I honestly couldn't give a fig, because, I mean, I'm so much better than them so who cares? You know?

MR SLINN: Yes, but it - - -

PROF SLOAN: So in some ways that's why I've found it hard that, you know, you're all professionals - I'm wondering why you're wasting time on this issue.

MR McEWEN: Well, to be honest, the term "architect" doesn't affect these large firms.

PROF SLOAN: No, okay.

MR McEWEN: It just doesn't come into discussion, to be honest. The firms are chosen because of work they've done, their experience and their credibility, nothing more.

PROF SLOAN: Yes.

MR McEWEN: They don't come and ask us too often, you know, "Are you actually a registered architect?" In fact, I don't think I've ever been asked.

PROF SLOAN: Okay, so the sky wouldn't fall in if the Architects Act was rescinded?

MR McEWEN: No, not at all.

PROF SLOAN: Okay. I'm sorry, I keep on interrupting you.

MR McEWEN: That's all right. The second one is competition. I guess we're all very aware of the CSIRO report and the result of that being a reduction over the last 15 years of our fees by - sorry, building designers' fees by 24 per cent, because I'll include building designers in there with architects, in that category - - -

PROF SLOAN: Neil's very hot on this stuff because he actually - I keep on talking through you. You probably think - - -

MR McEWEN: That's all right.

PROF SLOAN: - - - "That bloody bossy woman again!"

MR McEWEN: Yes, and - and - - -

PROF SLOAN: He oversaw a project on - well, they were ecologically sustainable buildings. Go on, give them your motto. Go on. They'll like it.

DR BYRON: It was just that my reaction to the CSIRO report was that the slogan should be, "Good design doesn't cost, it pays."

MR SLINN: That's correct.

DR BYRON: And the whole essence of that report is that it's been penny-pinching false economy to try and cut back, save a few thousand dollars on design that will cost millions of dollars over the life of the structure, and to me that's very unsurprising. I would have thought that it was almost self-evident. But I am surprised that the profession hasn't, in all its different arms and apparatus, been far more proactive in explaining to people out there who commission buildings that good design doesn't cost, it pays.

MR SLINN: Sure, but also, just on that point, there are some issues about who the client is and - - -

PROF SLOAN: Yes, the principal agent - - -

MR SLINN: - - - who it pays for. So it doesn't always necessarily pay for the immediate client.

PROF SLOAN: Yes.

DR BYRON: Yes, but even a developer who wants to sell it to somebody else who's going to rent it - if tenants in a commercial building are willing to pay, you know, X dollars a week more for a green, environmentally friendly building which has a passive solar top, smart windows, a good HVAC system, etcetera, the developer can make money out of selling that building, and so on.

MR McEWEN: Part of that is a tax position - capital costs in terms of the building versus the operating costs of the building. They don't quite match up. There's a whole separate argument about that.

DR BYRON: Yes.

MR McEWEN: You could go on forever about that.

DR BYRON: Yes. Another thing - - -

PROF SLOAN: But when you talk about fair bidding, which we hear quite a bit about, and I understand that that - it seems to me that that tends to be in a market which is pretty much the preserve of architects anyhow, so you're actually bidding against yourselves.

MR McEWEN: No, I would actually include the building designers, everybody, in the same - we're all in together. It's all happening - - -

PROF SLOAN: Okay, so you're all in the race for the bottom, are you?

MR McEWEN: Absolutely. It's unbelievable.

MR SLINN: See, there's no actual regulation about who can actually design a building.

PROF SLOAN: No. No.

MR SLINN: Anybody can do it.

PROF SLOAN: Yes.

MR McEWEN: I mean, at the moment - I actually found it interesting, and I've learned something here today, that - - -

PROF SLOAN: Just one thing?

MR McEWEN: Yes, just one thing, that - - -

PROF SLOAN: Well, that's better than nothing.

MR McEWEN: The building designers actually mentioned that 75 per cent of the work is not done by architects, so that means somebody else has got 75 per cent of the market than architects, which is a lot of work.

PROF SLOAN: I think that was residential.

MR McEWEN: It's a lot of work.

PROF SLOAN: I think that figure was - well, we've heard it might be even higher.

MR McEWEN: So I wonder where this competitive, competition problem is lying, because if they've got 75 per cent of the market and the architects have only got 25 per cent - by deduction. They're doing pretty well. I mean, most industries would love to have 75 per cent of the market.

PROF SLOAN: Yes, except that there are a lot of players within that 75 per cent.

MR McEWEN: Yes.

PROF SLOAN: But, no, I think if you read the report, we're not denying that the

actual - what we might call the product market - is incredibly competitive. I mean, you only have to look - I don't know whether you agree with them - - -

MR McEWEN: It's very competitive.

PROF SLOAN: - - - that the average and median incomes of architects is not telling you that there are monopoly rents being creamed off with this activity.

MR McEWEN: No. It just doesn't exist.

PROF SLOAN: No. So we concede that point, which is one of the reasons why we conclude that the anticompetitive effects of the architects acts are relatively small, because it really is only about this reservation of title.

MR McEWEN: Right. Okay, we're happy with that. Next one, built environment - - -

PROF SLOAN: We agree.

MR McEWEN: We do. Built environment: obviously the big, broad picture is Australia's built environment and what the community is actually being given, and I include building designers, architects and everybody else in this particular scenario. Premier Carr's flat design forum which we all attended was a typical one of those cases where he's really complaining about the quality of the built environment.

We have the same sort of situation with the Sydney City Council which has a design excellence and competition design process, where they're saying for any buildings in the city over 50 metres on a site bigger than 1500 square metres, they want three firms in competition with each other so that they get the best design, so that the built environment that we're all living in improves. Now, that is under draft, at the moment, for review, but it actually went into the LEP for Sydney City Council.

We also have Ku-ring-gai Council which is now proposing to prepare a register of building consultants, that they are prepared to accept drawings from when they lodge plans.

PROF SLOAN: So you're going to have to pass the taste test, are you?

MR McEWEN: Looks like it, yes - that too. So competition and all - - -

PROF SLOAN: Is that just going to be confined to architects?

MR McEWEN: The Ku-ring-gai one isn't. I think the Sydney City Council one is just architects - their choice of three architectural firms. The position is - - -

PROF SLOAN: So a developer couldn't just go to their architect of choice? Is that what that would mean?

MR McEWEN: Yes, they can. There are those options as well. The developer can go to his own architects, the council can choose them for him, or the other option - there were a couple - and there are also then competitions that the developer can hold on his own, and that's one of the options.

PROF SLOAN: That all sounds a bit expensive, entering too many competitions.

MR McEWEN: It does, yes. So that's more competition that we didn't want. The New South Wales ACA branch's recommendation - - -

PROF SLOAN: Well, don't say that. Don't say that.

MR SLINN: It's more cost.

MR McEWEN: Yes - sorry.

PROF SLOAN: "More competition we don't want" - - -

MR SLINN: More cost for the client.

MR McEWEN: More cost.

PROF SLOAN: "We love competition."

MR McEWEN: Our recommendation at the moment really sits on the basis that we are very concerned about the environment, about the quality of the design work, and the quality of the product that's actually built. If it's deteriorating as much as Premier Carr thinks, then I think we really have to get both the profession of architects, the building designers, everybody else, together, where we do actually set up these competencies totally, right through.

And I was actually very impressed to hear Barrie Wright talk about that this morning, that in fact he felt that had gone a long way. I have spoken to the Institute of Architects, and they don't feel it's gone too far at all. So I'd like to follow that up, because I certainly see it as a solution to the whole of this issue, because we've really got to take the wider community as being the ones that have got to benefit, and I think if we actually do set those standards all the way through for everybody who's been through TAFE and tertiary courses - and my reason there is that we've all got firms where we've got people in those firms who've come through a drafting certificate, have worked for us for 10, 15 years in some instances, have gone on, done the extra exam - the board's exam - and then turned out to be an architect and a very good one. So I've got no problems about somebody actually improving their position, their qualifications, their experience, and coming out as being then eligible - - -

PROF SLOAN: Yes, that goes back to - - -

MR McEWEN: - - - to be an architect.

PROF SLOAN: - - - to your competency framework.

MR McEWEN: I accept that, because they've actually got there by a different route but still got there - very happy with that. I would like to see something come out of this whole commission that actually puts that forward as a recommendation. It certainly would be good for the industry and - - -

PROF SLOAN: It does sit there.

MR McEWEN: - - - good for the public.

PROF SLOAN: I mean, it sits there on the books.

MR McEWEN: Yes.

PROF SLOAN: I think it's a very hard trick to take.

MR McEWEN: Very hard, but it has been started, so if it can actually carry on we'd totally support it. Also, that there is a register somehow that actually is then set up for that, and that register would be one that actually registers the competency, the codes of practice, the disciplinary actions, the level of professional indemnity insurance that must be carried for different-sized projects - I think we all agree about that - the provision of improving your competency by PD points or some sort of progressive education, and that that register is then available to all the statutory authorities. So we satisfy somebody like Ku-ring-gai Council - say, "Right, these are the people that can do your alts and adds," so the other gentleman who had a building done can be looked after by building designers or architects or whoever is at that level; six-storey blocks of flats up to your 42, 50-storey office buildings, so - - -

PROF SLOAN: So by implication you're accepting that the information that's currently provided by the realm of the Architects Board is pretty limited?

MR SKINNER: Very.

MR McEWEN: Yes.

PROF SLOAN: I mean, all you know is whether someone has got an architecture degree, had the three years' experience and passed the - or two years - passed the exam, be it in 1956 or 1995.

MR McEWEN: Yes.

PROF SLOAN: It's not a lot of information, is it?

MR McEWEN: No. It's got shortcomings, there's no question. Do you want to add any more to that?

MR SKINNER: Just in terms of the competency standards. Your previous submission referred to the Professional Standards Act and also to private certification. Now, they're hurdles so far in New South Wales that the architectural profession simply hasn't crossed - that we are busily trying to get going a scheme for private certification under the Environmental Planning and Assessment Act, and that's going to be a real nightmare in terms of working out competency standards which are above the level of a registered architect, because - - -

PROF SLOAN: Yes.

MR SKINNER: - - - it has been - there has been some experience from the engineers who do have accredited certifiers, but limited to what engineers do, rather than architects, and there are a limited number of planners accredited as well, so that we've got a situation where this legislation, which was meant to put the emphasis on private certification - but in fact it's still largely being done through the local authorities. They might subcontract it out, but it's not actually being done in the way that the legislation envisaged that it would be done.

PROF SLOAN: Yes.

MR SKINNER: And I think that that's forcing us to realise that the competency standards that at the moment tail off at registration aren't adequate at all. And some of the suggestions by the various departments involved in dovetailing in with the Department of Urban Affairs and Planning are very low levels of qualifications which, quite frankly - you know, if you design a major building over 25-metres high or, you know, a hospital or something, there are obviously different competencies to - - -

PROF SLOAN: Yes, look, I agree with all that.

MR SKINNER: - - - three-storey walk-up flats, and it's something that the profession - - -

PROF SLOAN: But it's also - - -

MR SKINNER: - - - has to face up to.

PROF SLOAN: There's a potential legal loop. Now, you see, we heard from the Building Surveyors and Allied Professionals Accreditation Council, which is a legal - it's a company, and its role in life is to accredit and reaccredit the building surveyors who are required to be licensed under the Building Acts, right? Now, in fact, they assume a legal liability if something goes wrong and it can be shown that they have falsely accredited someone - you know, the boomerang goes and hits them in the face - and they take that really seriously. And it seems to me the trouble with the

Architects Act is that, you know, there really aren't boomerangs hitting anyone in the

face there.

MR SKINNER: Well, the architects acts are different in all states, though, aren't they?

PROF SLOAN: Yes.

MR SKINNER: I mean, the Queensland one is a very much more comprehensive regulation of building designers and architects than in New South Wales.

PROF SLOAN: Yes. That's of course through their Building Act.

MR SLINN: As far as New South Wales goes, at least - and they are different in different states - it doesn't actually address the issue of who is allowed or who has to have competency in order to actually undertake an activity, it only regulates what you can call yourself. It's not saying, you know, that you have to have a certain competency standards to deal with a hospital or whatever it might be.

PROF SLOAN: No. No.

MR SLINN: It doesn't deal with that issue at all.

PROF SLOAN: But that's one whether the builder - you see, go back to the BDA idea of co-regulation. What is your view on this? And this is how it works, that you have a Building Act, you have within that building practitioners lists based on competency - right?

MR SLINN: Yes.

MR SKINNER: Yes.

PROF SLOAN: And how you do the accreditation, that can be worked out, and it may be through the RAIA or something else, and you may have layers of architects within that. So you've got a model of self-regulation plus - - -

MR SLINN: Statutory framework.

PROF SLOAN: Yes, some statutory recognition through the Building Act.

MR McEWEN: We have no problem with that. In fact, I think you will find the Institute of Architects is also recommending the same sort of model.

MR SLINN: I think that's also true in other professions. Although some professions might be self-regulatory, you have to be registered. If you want to be a company auditor you have to be registered under regulation.

PROF SLOAN: That's true.

MR SLINN: If you want to be a doctor and perform medical surgery, you have to be registered under statutory framework.

PROF SLOAN: So the accountants are self-regulated. If you want to put in a tax return you have to be registered to do that.

MR SLINN: A registered tax agent under law. If you want to be a taxi driver you have to be registered.

MR SKINNER: And the pharmacists are the same. For all that there is a Pharmacists Act in New South Wales, there is some prescription on what pharmacists actually do, and there are all sorts of other anomalies. There is no real analogy, I suppose, to architects in the other professions that we can find, because there is more protection in fact of the practice of what people do in every other profession which you can find. In theory anyone can call themselves a doctor but in fact, if you want to practise as a doctor, there is all sorts of good legislation - - -

PROF SLOAN: Yes, some legislation.

MR SKINNER: - - - and regulations that prevent you from so doing.

PROF SLOAN: There are two hypotheses here, and that is that Neil and I are complete philistines and have absolutely no appreciation of the role of architecture. Okay, that's a possibility, isn't it, Neil?

DR BYRON: Mm.

PROF SLOAN: The other thing is that it's actually very confusing as to what architects do, and they do all sorts of things, and it actually might help people like us, within some competency framework, if there was some sort of clear articulation of the kinds of things they do and the skills required to do those things. It seems to me that some of your architects who have worked in your firm have probably subspecialised over the years.

MR McEWEN: They do, yes.

PROF SLOAN: That could be recognised within some competency framework, it seems to me.

MR McEWEN: That's where you will find the guy that can do the hospital or the 42-storey building. The other one who's only done residential or smaller projects and has only got five years' experience, it will be a different scale of project.

DR BYRON: Or the guy that's spent the last 20 years just doing specification

documentation but hasn't done any design whatsoever.

MR McEWEN: Absolutely.

MR SLINN: There are more specialised roles, definitely.

PROF SLOAN: We can keep that first hypothesis going, I suppose.

MR SKINNER: But everyone is an architect and, once again, I think it's something unique.

PROF SLOAN: But everyone is an economist too.

MR SKINNER: Do you reckon?

PROF SLOAN: Absolutely.

MR SKINNER: No, not like everyone is an architect.

PROF SLOAN: I don't know about that. I think we're running short of time, but we really appreciate your input. It's been extremely useful.

DR BYRON: I just had one question for you, David, on your personal submission, if I could, while David is here.

PROF SLOAN: Certainly.

DR BYRON: On the first page you've said:

We contend that regulation is necessary to protect consumers and the built environment.

PROF SLOAN: We do too.

DR BYRON: That raises the problem of how you regulate for good design. I don't have a great deal of faith in governments or statutory agents as arbiters of good taste.

MR SLINN: No. I think it's getting back to this point of having competency standards that are recognised and having a framework that allows those who are recognised as having those competency standards to undertake particular activities, so again it comes back to the point, whether it's creating design or submitting plans to council, that there are recognised competencies involved in doing that. You can't legislate for good design; I totally agree with that.

PROF SLOAN: The Prince Charles test.

MR SLINN: No, you can't do that, but I think what you can do is to say that people involved in a particular activity have certain skills or experience or competencies, and I think that's the point that we've drawn out.

DR BYRON: When it comes to protecting consumers we have taken the view that the very big consumers of architectural services, whether it's AMP or a government agency or whatever, are big enough and ugly enough to take care of themselves, but we do see a potentially very vulnerable segment of consumers - the mythical Mr and Mrs Smith out there in the suburbs, the first time, etcetera - and yet those very consumers that we see as potentially quite vulnerable are the ones who the safety net doesn't seem to cover at the moment. That's where we think that the current system of registration is not a good match between identified problem and proposed solution.

MR SLINN: To me that's an issue about how the scheme works or how the regulation works rather than an issue of whether you have it or don't have it.

PROF SLOAN: I'm sure people aren't aware of the Architects Board by and large, if we went out there and asked a few people.

MR SLINN: But I think it's also a difficult area, because even large corporations can be one-time consumers where, in other areas, they're not necessarily - you know, it can be an infrequent purchase, if you like.

PROF SLOAN: No, that's a good point. They're not necessarily more savvy.

MR SLINN: It is an area of services which people may use only once.

DR BYRON: And there's certainly a "learning by doing" element if you've never done it before.

MR SLINN: That's right.

MR SKINNER: I think it's also fair to say that over 25 years in doing it I have seen, particularly in the public sector, the level of professionalism of the clients absolutely disappear, so that, for example, architects are now responding to briefs where you have to imagine what you're being asked to do and price it accordingly. Then, of course, you don't get the job.

PROF SLOAN: Because that's not really what they were imagining after all.

MR SKINNER: Well, once upon a time if you worked for government you got a very comprehensive brief prepared by an architect or an engineer who knew what they were doing.

PROF SLOAN: I think that is an issue. I think the professionalism of the contracting party - that is a skill that's an important part of it and it probably has diminished.

MR SLINN: Again, it's probably something - you can't necessarily regulate clients. I don't know. It's up to the client.

PROF SLOAN: Well, you'd hope they weren't constantly myopic and they would therefore learn the lesson.

MR SKINNER: There is one further point I would like to make if I may.

PROF SLOAN: Yes.

MR SKINNER: I realise we're running out of time. For all that the board of architects is not understood - and I know, because I have participated in many meetings with Martin, that the board of architects' role was severely misunderstood, where he and I went to a number of meetings about three years ago where we were threatened with being lynched by architects. However, I really believe that regulation by a statutory body would be better understood than regulation by the Institute of Architects, which I believe would be misunderstood. That's a personal objection that I have, I suppose, to regulation of architects being done by the Institute of Architects. I think it would be misunderstood. It's already misunderstood enough now.

PROF SLOAN: Yes.

MR SKINNER: I deal with queries all of the time by phone from the public - it's part of my job - where people - and they're not necessarily one-off or first-time clients - ring up with all sorts of queries about their architect's behaviour, and they are very suspicious of the Institute of Architects and they're very suspicious of architects, so I am convinced from that experience that if there's going to be any from of regulatory body then it should be a statutory one and not a professional body one.

PROF SLOAN: But presumably a quite significantly reformed one, because in some states there's such an overlap between the Architects Board and the RAlA that it's a bit hard to tell the difference. The officialdom is the same for the two bodies. Does that instil public confidence?

MR SKINNER: I don't think any of us here would disagree with you that the present architects acts don't really work and could be made to work much better.

PROF SLOAN: Thanks very much, gentlemen, and thanks for your submission, David.

MR SLINN: That's all right. Thank you.

PROF SLOAN: I now call Peter Dobrijevic. If you could give us your name and your affiliation for the purpose of transcript, that would be great.

MR DOBRIJEVIC: My name is Peter Dobrijevic. I'm a consumer.

PROF SLOAN: It says here you're an engineer too.

MR DOBRIJEVIC: I am. I'm a professional engineer. I have worked with CSR and Exxon in the past. Currently I'm a stockbroker and my speciality is financial analysis of media companies. I've been a user of the architectural industry since 1994 and if I'm particularly chirpy it's because today I've had my construction certificate finally approved, after six and a half years.

PROF SLOAN: What does that mean?

MR DOBRIJEVIC: That means that the preliminary DA and BA - building application, design applications - have been approved by Ku-ring-gai Council. Firstly I'd like to say I concur with the recommendations of the commission because I think they address the important issues of protecting the small consumers who rely on professional tags. Secondly, I think it discourages what I think are bait and switch tactics by the architectural profession.

PROF SLOAN: The?

MR DOBRIJEVIC: Bait and switch.

PROF SLOAN: Can you explain that to us.

MR DOBRIJEVIC: I think what architects do is, you go to an architect and ask for a job and you give them a brief, and they go away and design it and, before you know it, there's an escalation of the fees associated with that and the cost of the job. Whether that's a deliberate ploy or not - in fact the standard form architectural agreement that consumers are encouraged to sign actually encourages that behaviour, because it's a sliding scale of fees. If you say to your architect, "I'd like a fixed lump sum price," they say, "Well, that's not part of the standard RAI A agreement for consumers - for the public - for the small consumers."

PROF SLOAN: You're in a sense picking up Peter Donovan's point, which is that architects aren't really necessarily advising particularly smaller clients on the contractual arrangements that would best suit their interests.

MR DOBRIJEVIC: I think that's obvious. How could you design a contract in the way they have done it if they were trying to serve the interests of the consumer best?

PROF SLOAN: This is notwithstanding the fact that we have architects acts?

MR DOBRIJEVIC: I think the architects acts - I think you hit on a point earlier, or some of the last submission did, that there doesn't seem to be a lot of difference between the people who are involved in the regulation and those involved in the Royal Australian Institute of Architects. It seems to be like a very small club and, once again, I think the evidence is that retail consumers haven't used architects because, firstly, it's expensive and, secondly, those people who do use architects often come away with less than satisfactory experiences. I thought it was interesting that we didn't see a plethora of submissions saying how architects kept jobs within budget and on time from the general public.

PROF SLOAN: I suppose if you're happy, who's going to bother to write in? We did have one happy consumer make a submission.

MR DOBRIJEVIC: I read that submission, but I think also you will see a lot of people haven't bothered to put negative submissions in because they're sick of the whole business. My family advice was, "Don't put a submission in. You've wasted enough time already," and I think that's a common problem with a lot of users of architectural services.

PROF SLOAN: Have you ever tried to make a complaint to the Architects Board of New South Wales?

MR DOBRIJEVIC: I haven't, and the reason I haven't is that despite limited legal training, I'd rather rely on my contract.

PROF SLOAN: So you've obviously got common law rights within the contractual arrangement. I think it's an important point, because we've got a hypothesis that there's no problem with the complaints procedure. The fact that there are few complaints and even fewer deregistered, that tells you the system is working. I understood that you have to quote a section of the act if you make a complaint, which is pretty tricky for someone who's just ringing up to make a complaint.

MR DOBRIJEVIC: I'm not aware of that, but I think if you had a complaint and you didn't feel as though you were going to get a fair amount of justice, your alternative action is to take common law action and, in those circumstances, there's a certain project size and damages that make it economical. For the average punter out there, it's well beyond the normal range they can afford.

PROF SLOAN: Are you making the point that because there seems to be this overlap between the membership of the Architects Board and the RAIA - does that undermine a public perception of the statutory independence of the Architects Board?

MR DOBRIJEVIC: I think it does.

PROF SLOAN: Would you expect the Architects Board to be dominated by architects?

MR DOBRIJEVIC: I don't think there should be an Architects Board full stop. I think that what happens is that the consumer gets lulled into a false sense of security that there's some sort of protection. You can go and do the investigation on the Web site, find someone who's won the Wilkinson Award or the Sulman Award, employ that person and still get less than satisfactory service. I think that if you've had that experience and you've come up with problems then it tells you that maybe we should have a structure where people are encouraged to go out and do more due diligence, in the same way if someone is going to use a building designer, they will actually do, I think, more due diligence in selecting a building designer than they will in selecting an architect.

PROF SLOAN: We made the point - we haven't necessarily got a tremendous amount of support for it - that in fact there may be a cost to the existing arrangements because it implies some government guarantee which simply doesn't exist, and people are lulled into some sense of security by dint of government registration.

MR DOBRIJEVIC: I think that's actually right, and the cost gets broadened once you use the architect. Architects traditionally will charge based on the project cost. Now, what's interesting is, when you start looking at what work they do and what work they don't do, they don't do hydraulic engineering work, they send that out to the consultant; they don't do the structural engineering work, they send that to a consultant; they don't do the geotechnical work, they send that to the consultant.

PROF SLOAN: And they don't supervise either.

MR DOBRIJEVIC: They're supposed to supervise the engagement of those consultants, but what's interesting is that the first question those consultants ask when you ask for a quote, a lump sum quote, is, "What's the value of the project?" not, "Are you building on a flat piece of land in Blacktown that's not on a flood plain?" or whether you're building on a cliff in Whale Beach - it's, you know, "What's the cost of the project?" And I have a strong suspicion they pitch their prices on a sliding scale because, why wouldn't they, the architects are doing it. So this all mounts up.

PROF SLOAN: Yes. So they look at what kind of car you're driving and price accordingly?

MR DOBRIJEVIC: Exactly. Exactly. And, as I said, the contract is designed - and if you accept the standard form contract, contracts are designed so that there's a tendency to increase the project cost - - -

PROF SLOAN: Yes.

MR DOBRIJEVIC: - - - because the architect gets more fees and then they've got school fees to pay and mortgages and BMW lease payments to make.

PROF SLOAN: So it goes back to that point about your concern about the contractual arrangements that are being recommended, effectively, by the architects

and whether they serve the consumer.

MR DOBRIJEVIC: Mm.

PROF SLOAN: And there we have the Architects Acts and the Architects Board sitting there, as part of government legislation, and, I mean, we have to ask ourselves the question, to what extent do they protect the consumer?

MR DOBRIJEVIC: I think that the last speakers - and I wasn't here for the whole of their presentation - agree with my submission that said that the big end of town largely doesn't need protection, it's only the little end of town.

PROF SLOAN: Yes.

MR DOBRIJEVIC: And I think they do need protection, and I think that the alternative of more stringent regulation has the same inherent problems that the current system has, and the problems are, what regulatory structure you put in place, who do you put on the various boards and - whereas a total deregulation would create a structural change which I think would warn consumers, and it will also increase the competition for the design aspect of the work, and it would also help those good architects, those good people - those employees of architects who have got bachelor of architecture degrees who aren't registered, who may want to branch out on their own and develop some competition in that retail market, or housing market.

PROF SLOAN: Yes. What about this sort of co-regulation model but which is mainly - 90 per cent - self-regulation where, within a state Building Act, there's a list of competent professional building service providers? Now, that actually exists in some of the states and it probably would show people where competencies of building designers overlap and don't overlap with architects. Do you think that would be useful?

MR DOBRIJEVIC: I think, once again, it would lull people into a false sense of security because - - -

PROF SLOAN: But you would want your builder to be licensed, wouldn't you? That's where that happens.

MR DOBRIJEVIC: Well, it doesn't particularly bother me because the lesson I've learned from - - -

PROF SLOAN: Bitter experience?

MR DOBRIJEVIC: - - - dealing with architects is that what you want to do is have a contractual arrangement that's watertight and gives you the protection. I would get a builder, I would not pay progress payments, I would pay a lump sum, I'd have it properly inspected by third party engineers, because they're the ones who actually do most of the important checking work, in my view, not the architects. So that

wouldn't

particularly bother me. I think it would be a good point, it would be a good idea to have a register of people who there've been complaints against. That would be worthwhile. But, no, not a register of competent people because, once again, there are a lot of architects who are competent who have blown budgets out of the water.

DR BYRON: As a graduate engineer, are you familiar with the National Professional Engineers Register and how that works?

MR DOBRIJEVIC: I do - I'm a member of the Institution of Engineers, but I don't read the literature that regularly because it's not relevant to me any more. So, no. The answer is no, not familiar, but let me say that the issue about titles - engineers - there are a lot of mechanics out there who call themselves engineers and - - -

PROF SLOAN: Does that worry you?

MR DOBRIJEVIC: Look, I haven't lost any sleep over it. It does bother me but, you know, it doesn't make me lose sleep or it doesn't upset me, and my friends who are engineers, they boast that they're better mechanics than those people anyway - and they're engineers. So, no, it's not relevant. I don't understand why the architects are so sensitive to that.

DR BYRON: I said earlier this morning that I attended a board meeting of the National Register for Professional Engineers a few weeks ago, and I was rather struck by their observation that some of the people who are on their register are really not competent and should be - they have to be sought out and culled, and that was - they were very aggressive about maintaining the quality control and the standards of the people on their register, because the integrity of their brand was at stake. Given that, I wonder whether something similar might work with architects.

MR DOBRIJEVIC: Look, I think this goes back to the issue that was raised in the last submission about, you know, is there a boomerang that comes back and hits you in the face.

PROF SLOAN: Yes.

MR DOBRIJEVIC: I mean, sure, you may be able to design a system where the boomerang comes back, hits you in the face, and it hurts. But the fact is, I doubt there's a desire by the regulators to have the same system they impose on the medical profession. I mean, if you're a doctor and you make a mistake, you know, the consequences are serious and immediate and you get hit in the face with the boomerang very quickly. So I don't think it's reasonable to expect that sort of regulatory framework to be set up, and a professional body to be designed in such a way that that would happen with the architects. I don't think it will happen with the engineers, either. I mean, it would be nice in theory, but it won't happen, in my view. It's not practical.

DR BYRON: So you'd come down very heavily on caveat emptor?

MR DOBRIJEVIC: Exactly. Exactly. I think that the current system - - -

PROF SLOAN: And you can't legislate, really.

MR DOBRIJEVIC: Well, I don't think you can. I think what you'd have to do is you'd have to warn people that they need to do an enormous amount of due diligence, no matter what label that service provider has, whether they're an architectural building designer or whether they're a draftsman, and I think - - -

PROF SLOAN: And presumably within that you are wanting to make common law restitution as accessible as possible, too.

MR DOBRIJEVIC: Exactly. Exactly.

PROF SLOAN: Yes.

MR DOBRIJEVIC: You know, at the moment you've got the issue about common law rights and there's potentially an issue with the Trade Practices Act - - -

PROF SLOAN: Yes, there is.

MR DOBRIJEVIC: - - - because there's "false and misleading" provisions, but I think that's enough - that's enough of a deterrent.

PROF SLOAN: Right, because - just go back to this point, particularly as you're an engineer. We've got a submission here which - architects are inclined to think of all reasons why we might keep the thing, including ensuring the structural integrity of buildings. Now, of course because there's no regulation of practice it's a bit of a funny reason, but we've got this fellow saying that really the structural integrity of buildings and structures is the domain of the engineers.

MR DOBRIJEVIC: Of course it is.

PROF SLOAN: And not the architects, and in fact the architects aren't well-trained in this at all.

MR DOBRIJEVIC: No.

PROF SLOAN: And he goes on to say:

The practice exam for architects does not embrace knowledge of the structural aspects of construction at all.

MR DOBRIJEVIC: No, I think - well, I'm not sure about what their education or what their university course covers, but architects aren't in a position to even design -

I think one-metre retaining walls is where you get a structural engineer to get involved. I don't think they're competent enough to design that, let alone - - -

PROF SLOAN: And you're saying they'd subcontract that work anyway.

MR DOBRIJEVIC: Yes, they subcontract it all out, and you have the added check that, for example, footings on a building site - who okays the footings? I doubt that it's the architect who sits there and goes through the calculations or even eyeballs the plans to say, "That's okay." It actually gets checked by the council, and it's one of the conditions of putting in a building application or a construction certificate, is you have the footings - - -

PROF SLOAN: You would expect the architect to know that footings were required, though.

MR DOBRIJEVIC: Well, I'm not sure whether they would. I mean, there have been instances where architects haven't put proper footings in. So, as I said, the really hard, technical - - -

PROF SLOAN: It's like caveat emptor in neon lights, really, isn't it?

MR DOBRIJEVIC: Well, it is, and the architects can add value in terms of design, but there are a lot of people out there who can add value with design, and I think that the consumer has to do more due diligence to be protected. It comes back to the consumer. It's the consumer's responsibility.

PROF SLOAN: Is there a role for government in that, though, in the sense that - well, of course, the message that a lot of consumers get - if something goes wrong, the government will pick up the tab, make remedy. I mean, is that the wrong message altogether? The message should be, from governments, "Look, you know, it's a jungle out there. Do your research. Do the work."

MR DOBRIJEVIC: I don't think you can make that blanket statement. I think the medical industry is sort of a different case. I think that needs pretty tight regulation, but architects, engineers, plumbers, carpenters, plasterboard layers - no, I don't think they need to be regulated.

PROF SLOAN: Neil?

DR BYRON: I was just going to ask if you could elaborate briefly on the last of the dot points in your very brief submission. It said:

Economic reasons why architects do not want to change.

MR DOBRIJEVIC: Well, they want to limit the supply of people that can offer their equivalent services and, secondly, if they can limit that supply and ensure that all the members or all the people that offer that supply are members of their own

professional body, there's this tacit pressure, sort of getting people to use the standard form contract, which is good for architects. So there's an economic incentive to keep the club together and use the standard contracts.

PROF SLOAN: But it's interesting - I know you talked about - and I think that's right, it has been difficult to elicit a consumer response. It's also been actually relatively difficult to elicit any response from the larger architectural firms, and the fact that we had the association just then is probably an exception. Because it seems to me that when we went and spoke to the large architectural firms as part of the original consultation process, they don't really care.

MR DOBRIJEVIC: Well, I don't think they should care unless they want to do any sort of residential work.

PROF SLOAN: Yes.

MR DOBRIJEVIC: And the reason why they don't care - - -

PROF SLOAN: They sort of like it but, yes, they're not going to - - -

MR DOBRIJEVIC: Well, I mean, this argument about the requirement for overseas accreditation - the simple fact is that before you start building or applying for work overseas you've got to have a domestic track record and once you have a domestic track record, when you go to apply for the overseas work you show the consumers overseas what you've done. And I think the last speaker's comment - said that they rarely ever get asked about their accreditation because, I suppose, after they've presented their portfolio there's no need.

PROF SLOAN: Yes. Well, thanks very much, Peter, for coming along. You've been a very interesting addition.

MR DOBRIJEVIC: Thank you.

PROF SLOAN: And you can watch this space with interest.

MR DOBRIJEVIC: Great. Thanks for your time.

DR BYRON: Thank you very much.

PROF SLOAN: There being no further participants, I now call an end to the fourth day of public hearings for the review of legislation regulating the architectural profession. We will recommence in Melbourne next week. Thanks.

AT 3.45 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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