

THE ARCHITECTS BOARD OF SOUTH AUSTRALIA

RESPONSE TO THE DRAFT REPORT OF THE PRODUCTIVITY COMMISSION ON THE REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION

INTRODUCTION:

The Architects Board of South Australia, which is constituted under the Architects Act of South Australia, has prepared this response to the Draft Report is based upon consideration of the report against the stated “Background” and scope of the review and in the context that the Board believes primarily that the current Act exists to give protection to the public.

The Terms of Reference of the enquiry state:-

“The purpose of the inquiry is to:-

- a) achieve greater consistency in any future regulation of the architectural profession in Australia; and
- b) assist State and Territory governments in meeting their legislation review obligations under the *Competition Principles Agreement*, in relation to legislation that regulates the architectural profession.”

The Competition Principle Agreement states under Legislation Review - 5(1) The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:-

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

The Architects Board of South Australia contends, that whilst the Draft Report includes many correct and informative points of view:-

- insufficient weight has been given to the point that the current Acts do not restrict competition;
- insufficient consideration has been given to the objective of achieving greater consistency in any future regulation of the architecture profession; and
- insufficient assessment has been carried out of the risks to the public if the State and Territory Acts are repealed.

RESTRICTION OF COMPETITION:

The Draft Report appears to have been written presuming that the current Acts do restrict competition and it has therefore concentrated on Item 5 (1)(a) (of the CPA) “the benefits of the restriction to the community as a whole outweigh the costs.”

However this clause states that these conditions need to be demonstrated only if competition is restricted.

The Draft Report states in the Findings on Page 91, “The anti-competitive effects of the Architects Acts appear to be limited”. However this Finding is then qualified by the effects of other legislation in one State and the question of derivative terms eg architectural. This view is further reported on Page 114 with the comment “On the whole, the anti-competitive costs of restriction on the use of the title architect and derivative terms appear to be limited.”

The Draft Report does not give due cognisance of the TPC Findings in 1992 which stated “Study of the Profession – Architects” (Referenced P85). “The Commission considers that certification of the title “architect” and its derivatives does not have a significant effect on competition in the market for building design services. Use of the title is a privilege backed by law and the Commission considers that the provision of appropriate public information about the certified title and the training and experience it signifies would assist clients to differentiate between service providers in the building design services market, and would be in the public interest.”

Again the Draft Report refers to the impact of other legislation outside the purview of the review in order to reach its conclusion (Refer Page 91).

Arriving at the conclusion that the Acts are not anti competitive, the Board believes that the States obligations under the National Competition Policy can be achieved without repeal of the current statutory backing.

ACHIEVING GREATER CONSISTENCY IN ANY FUTURE REGULATION OF THE ARCHITECTURAL PROFESSION:

The South Australian Board re-iterates its opinion that uniform National Regulation with one Board and one registration scheme should be established independent of the professional body representing Architects.

The Board believes further consideration should be given to AACA proposals and is concerned about the apparent lack of objective assessment of their proposals and the apparent premise from the Commission that the RAIAs should be the self regulating body (Ref pp 134).

The Draft Report of the Productivity Commission has given scant recognition of the non-statutory organisation, the Architects Accreditation Council of Australia (Refer Page 105). This body was established by all the State and Territory Boards properly recognising the need for a nationally co-ordinated system and represents at a National level the interests of the various Boards.

AACA is the body contracted by the Commonwealth Government to assess architectural qualifications gained by overseas persons wishing to apply for immigration to Australia. This role was not acknowledged in the Draft Report.

AACA is also the body co-ordinating assessment of residents in Australia with architectural qualifications gained overseas. The matter of providing correct recognition for immigrants training and qualifications was fundamental to the initial enactment of Architects Acts and this also is not discussed in the Draft Report.

AACA supported by the Commonwealth Government developed and produced the National Competency Standards in Architecture which culminated in the National Programme of Assessment enabling competent persons holding no recognised formal qualifications to become eligible for registration as an Architect.

The other roles undertaken by AACA are:

- instigator of the nationally co-ordinated Architectural Practice Examination and procedures for registration;
- promulgator of the National Legislative Guidelines, guidelines which have not been adopted, not due to lack of willingness of AACA or Boards, but due to the ultimate responsibility resting with State and Territory Governments; and
- instigator of mutual recognition agreements with overseas countries to facilitate overseas trade.

The Draft Report does not carry out a fair appraisal of these Legislative Guidelines which address many of the valid criticisms of the current legislative arrangements ie.

- inconsistency of state legislation;
- duplication of legislation requiring multiple registrations;
- open and transparent procedures are being adopted for examinations with the recently introduced National Examination Paper;
- repeal of minimum ownership provisions;
- repeal of advertising restrictions and other archaic provisions;
- removal of some restrictions on the use of derivatives;
- introduction of a two tier registration system with a practice certificate;
- ensuring competence and more protection for the public by ensuring Compulsory Professional Development and Professional Indemnity Insurance;
- lay or consumer representation on Boards; and
- independent investigation of disciplinary matters and channels for appeal

AACA strongly opposes weakening of title restrictions or registration requirements because it believes it is in the public interest to ensure appropriate minimum standards, standards which are very similar to 57 countries overseas. Overseas countries with which we run the risk of lessening the ability to trade due to being out of step.

RISKS OF REPEAL OF LEGISLATION:

Sections of the Report addressing the likely impact of repealing the Acts are entirely conjectural.

The Draft Report acknowledges on P108 that “the Commission is not aware of any precedents where other comparable countries have removed registration”.

The Draft Report reaches surprisingly similar conclusions to a review of the UK situation in 1992. The Warne report recommended that protection of the title “architect” be abolished and ARCUK disbanded and if registration was to continue to be undertaken by RIBA. In fact the Warne report is quoted in the penultimate paragraph of the Report directly before the draft recommendation that the State and Territory Acts be repealed. It is most significant that the Draft Report does not canvass events in the UK which followed the release of these recommendations. These recommendations were turned over completely with the final outcome being the constituting of a new Architects Registration Board.

The South Australian Architects Board believes that the potential economic damage to Australia through deregulation are significant when regulation is the status quo throughout the world and could result in:-

- significant loss of overseas students within Australian architectural schools; and
- loss of market share of work undertaken by Australian architects overseas.

There are significant risks to the General Public should the Acts be repealed. Generally the general public can rely on the fact that an Architect has suitable qualifications and this education and training ensures better levels of safety/quality. There are significant risks in an unqualified person holding themselves to be competent in an industry where Government requires almost all participants to be licensed due to the potential impact of the health and safety of the general public.

CONCLUSION:

The Board is unable to comprehend why a system should be abandoned:-

- that is economic to administer;
- benefits the public;
- provides a competitive base for Australian architects and Australian architectural education; and
- is not anti-competitive

The Board urges the Productivity Commission to reconsider its recommendations and promote Uniform National Regulation of the architectural profession.

APPENDICES:

- Queen Victoria Building (Page 84) – significant reference to the Architect [contrary to Draft Report]
- Japan Licensing System (Pages 117-118) [contrary to Draft Report]