



Association of Consulting Architects

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**Submission on
Draft Report
of the
Productivity Commission**

**Review of
Legislation Regulating
the Architectural
Profession**

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ASSOCIATION OF CONSULTING ARCHITECTS - AUSTRALIA

SUBMISSION ON THE DRAFT REPORT OF THE PRODUCTIVITY COMMISSION ON ITS REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION

1. INTRODUCTION

1.1 The Association of Consulting Architects - Australia ("ACAA") was formed in July 1986. It is the peak Australian organisation representing architectural practices and has branches in all states and territories.

1.2 It is a national organisation with members in all states and territories. Membership has grown to more than 700 practices, including the leading architectural firms in Australia.

1.3 The ACAA's objects include:

- to promote and encourage the highest standards of architectural services;
- to promote and encourage the highest standards of architectural education;
- to promote the use of architectural services;
- to do all things to promote the profession of architecture;
- to act as the industrial representative body of employer architects; and
- to serve its members.

2. TERMS OF REFERENCE

2.1 The Commission identifies two "overarching principles" in its terms of reference:

- (a) a cost/benefit analysis of benefits versus costs to the community of legislation which restricts competition; and
- (b) the desirability of consistent regulatory regimes and to avoid unnecessary duplication.

- 2.2 The ACAA supports the Commission in this reference and thanks the Commission for conducting its hearings to allow interested parties such as the ACAA to submit their views. The ACAA appreciates that its Branches have each had the opportunity to appear before the Commission and intends that this submission should be taken by the Commission as summarizing its overall position.
- 2.3 The ACAA makes its position based upon the fundamental premise that it is the interests of the community at large, and no particular interest group alone, which must be allowed predominant consideration.

3. DESIRABILITY OF CONSISTENT REGULATORY REGIMES

- 3.1 The ACAA urges the Commission to investigate in greater detail the desirability of consistent regulatory regimes. The ACAA submits this could be achieved through implementation of a national regulatory scheme for architects.
- 3.2 The ACAA submits that a national regulatory scheme would:
- (a) address the many existing deficiencies with the current disparate State and Territory regulatory schemes (not least of all by unifying them into a common system); and
 - (b) put Australia in a position which is consistent with a significant international majority of similarly regulated nations, allowing Australia to compete even more successfully in the growing international market for architectural services.

4. COST/BENEFIT ANALYSIS

4.1 Defining the Market

In order for a proper cost benefit analysis to be conducted, it is essential that the relevant market be accurately defined. It is submitted that further consideration must be given by the Commission to identify the true market for architectural services. The ACAA believes that there is a relevant market which exists and is deserving of the protection afforded by regulation.

4.2 Consumer Protection

The ACAA agrees with the Commission that existing regulation through the State and Territory Architecture Acts is inadequate to convey adequate consumer protection. However the ACAA considers that some State legislation - such as Victoria's, is considerably more successful than other's - such as New South Wales'.

The ACAA does not agree with the Commission's finding that architects may not be responsible for construction safety. Architects are responsible in their day to day work with many matters including but not limited to design issues, which impinge dramatically on safety issues. This includes contract documentation and administration, certification of works, project management and many other tasks.

If, which the ACAA accepts, the current registration practice for architects may not be universally ideal to ensure expertise in current construction techniques, then the ACAA submits that improved stringency may be desirable for obtaining and maintaining registration.

The Commission notes other consumer protection within the market is afforded by building controls, fair trading laws and general contract laws. While these are to be welcomed, the ACAA believes they hold inadequate regard for matters of design and quality of the built environment, and also depend unduly upon litigation rather than pre-emptive in their effect, which is one of the advantages of effective regulation.

4.3 Exports

The ACAA notes that the export of Australian architectural and architectural education services is a substantial strength of the architectural industry and serves to fulfil Australia's interests in being a strong exporter. The ACAA notes that these exports are not merely by way of nominal roles in foreign joint ventures but rather involve significant work for Australian architects who rely, amongst other things, on their registered status to secure such opportunities.

The ACAA agrees with the Commission that "it is possible to devise mechanisms which certify that exports and exporters have met certain standards", other than through statutory certification. The ACAA is concerned however that there may be significant costs associated with implementing such alternative mechanisms, which would weigh upon the community and in particular exporters. The ACAA submits that further and detailed consideration is warranted of what these alternatives might be, and their costs of implementation.

4.4 Spillovers

The ACAA submits that commensurate with a re-examination of the role of architects, so too should the question of spillovers be further investigated by the Commission. In the ACAA's view the regulation of architecture ensures a substantially greater likelihood of design, contract documentation and administration and project management aptitude, which must inevitably have a positive spillover effect. These include an enhanced built environment and safer, more environmentally and user friendly, construction. While current regulatory schemes may not always be sufficient to ensure that spillover benefit is maximised in each and every instance, nevertheless to remove regulation would only serve to dramatically increase the likelihood of negative (or at least, reduced positive) spillover effects.

4.5 Structural Dependencies

There are a number of organizations and legislative schemes such as the ACAA, the RAI, the AACA, and the Federal Industrial Architects' Award whose function and success could be seriously undermined by an abandonment of regulation and registration of architects. This is because registration is a benchmark of competency relied upon by each of the organizations and schemes mentioned. The ACAA submits that the impact on these organizations and schemes, of abandoning

regulation and registration, and the consequential cost, should be further investigated by the Commission.

4.6 Self Regulation

The Commission suggests that consideration be given to self regulation by an industry organisation. The ACAA submits that this would raise a major conflict of interest issue of the same nature as has been raging around the legal and medical professions for some time. A body which purports to represent and advocate the interests of members of the architectural profession on the one hand must potentially find itself conflicted in seeking on the other to adequately accredit, regulate and discipline its members.

4.7 Quantifying the benefits and costs

The Commission acknowledges that "the anti competitive costs of restrictions on the use of the title architect and its derivatives do not appear to be large" and that "the current system of regulation also incurs administrative costs [which are] still low". Nevertheless the Commission considers that the existing State and Territory certification schemes do "very little to address the shortcomings in the market for building design and related services".

The ACAA submits that regulation under an improved national scheme would more than redress this imbalance and fully satisfy the cost/benefit test.

The ACA attaches comments by Ainsley Jolley on the Costs and Benefits of Regulating the Architectural Profession.

5. CONCLUSION

The ACAA acknowledges that its recommended scheme is embryonic only. However it vigorously submits that a rationalised and reinforced national regulatory system would be an optimum solution for participants within and consumers of that industry and also for Australia's built environment and for Australia generally. The ACAA submits that this would be a dramatic improvement over either maintaining the existing disparate state regulatory systems or abandoning regulatory interference altogether.

While the ACAA has no difficulty with the repeal of State and Territory regulation schemes over a fixed period, it submits strongly that an alternative regulatory scheme of the nature described should be created and introduced over the same

period, rather than leaving a vacuum. The ACCA also suggests that 2 years may be inadequate for this process to be properly undertaken and suggests a 4 year period instead.

The ACAA welcomes the Commission's further enquiry into these issues and would welcome the opportunity of further participating in the process.

PRODUCTIVITY COMMISSION REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION: COMMENTS BY AINSLEY JOLLEY

THE ISSUES

The Productivity Commission's argument

1. The core principle that the Commission is required to take into account is that legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation cannot be achieved more efficiently through other means.
2. The core criteria include that regulation:
 - Is justified only where community welfare is enhanced;
 - Should minimise adverse effects on competition;
 - Where applied, should be transparent, open to scrutiny and regular review, and minimise administrative and compliance costs.
3. Certification appears to do very little to promote additional community benefits, and equivalent or superior outcomes could be delivered by other mechanisms.
4. Certification imposes costs on consumers, hence there are net costs associated with certification.
5. The benefit-cost balance could be improved by amendments to the certification process, but such an approach would still be inferior to the alleged failure of Architects Acts to target consumer and community issues directly.
6. Repeal of Architects Acts would tend to encourage the development of a system of self-regulation.

A brief comment

Cost-benefit analysis can only be legitimately applied if a clearly defined scenario is compared with an alternative clearly defined scenario. One comparison made in the Commission's analysis is between the current regulation of the profession through the operation of the Architects Acts with a situation in which there is no legislative certification of the profession (the 'base' case). The net benefits or costs of regulation take the unregulated base case and compare it with the current regulated situation. The complication in this analysis is that the Commission makes a number of assumptions about how the market would adjust in an unregulated situation (indeed, its charter requires it to emphasise the positive outcomes secured by unregulated markets). So the assessment of net benefits or costs associated with the current regulatory regime involves in part an assessment of how the market would react to the absence of regulation.

A third scenario is also relevant because the Commission is required to consider amendments to the certification process. Comparisons are made between modified certification and current certification, and between modified certification and an unregulated situation.

THE COSTS OF REGULATING THE ARCHITECTURAL PROFESSION

1. Restrictions on the use of the individual title of architect appear to have no anti-competitive effects of any quantitative significance in the building design market since:
 - Certification relates to the use of title and does not prevent uncertified providers from competing in the market;
 - There is no observable premium in architects fees, which are quite low in comparison with most other professions;

- There is every sign of non-architects actually competing vigorously across much of the building design market.
- 2. Title restrictions on multi-disciplinary enterprises containing architects may have some anti-competitive effects, but in this case the costs are born by both architects and consumers. If they are of quantitative significance it could be expected that there would be pressures for their modification or elimination.
- 3. Restrictions on the ownership of architectural practices may constrain architects in competing with non-architects, but there would be pressure for change within the profession if these effects were other than negligible.
- 4. Separate and somewhat different State and Territory registration requirements for individuals and companies have generated costs in multiple registration.
- 5. The linkage between Architects Acts and other regulation may be anti-competitive, but the Commission admits that this relates to the other regulations; and not primarily to the Architects Acts.
- 6. In comparing current regulation with an unregulated market, costs appear to be greater than zero but negligible.
- 7. Modifications to current regulations on ownership and the harmonisation of State and Territory regulation have the potential to eliminate the small volume of costs associated with the current regime.

THE BENEFITS OF REGULATING THE ARCHITECTURAL PROFESSION

The most substantial benefits of the certification process relate to exports, competition against imports, and the export of education in architecture. The Commission accepts the proposition that information deficiencies are likely to be greater for overseas consumers than for domestic consumers. There is regulation of practice or title in a broad range of countries with which Australia trades, and architectural practices active in exports stress the importance of certification. There appears little dispute that significant benefits accrue to Australian exports, although the Commission argues that these benefits could be attained through alternative forms of self-regulation¹. Exports contribute around 7 per cent to the income of Australian architectural services², and up from around 1.5% in 1991-2, a major growth element in the overall demand for architectural services. The Commission offered no significant comments on imports of architectural services, and there are no current statistics available. However, anecdotal evidence suggests a rapid globalisation in the market for major corporate projects over recent years, with major multinational companies developing relationships on a global basis with architectural practices. Certification may be necessary to ensure a level playing field between imports and local supply. Finally, certification requirements add credibility to Australian university courses in architecture and may well generate benefits in the marketing of Australian exports of architecture education.

With respect to other information problems in the market for building design and related services, potential benefits are most likely to accrue to infrequent individual or (small/medium-sized) business consumers, and generate returns related to safety and appropriate versus inappropriate design. The Commission raises doubts as to the effectiveness of certification in securing such gains, doubts relating in part to the indirect nature of the connection between certification and safety/appropriate design (since registration is a one-off process) and also to the fact that building codes and fair trading laws are more effective avenues for consumer complaints. However, improvements in the general standard of conduct are desirable, with codes and legislation providing protection when lapses occur. The Commission argues that benefits would be

¹ There is little evidence as to how effective such alternative approaches might be. The experience of Sweden and Denmark cited by the Commission has little relevance to the Australian situation because it is bound up in intra-EU regulation as well as different historical circumstances in the evolution of international architectural practices. The example given for engineering of a national voluntary registration works for that profession, but may not be internationally so acceptable for architecture with its tradition of certification.

² Exports were \$44 million, plus or minus for adjustments re non-architects and architectural contributions in major project earnings, while total services earned \$700 million, although this included the contribution of non-architects.

negligible, while the profession argues that there is a positive impact from a well-trained profession. Perhaps one could conclude that the benefits range from zero to fairly modest.

The Commission argues that the benefits from spillover effects are unlikely to be significant. The profession argues that regulated architecture generates spillover effects associated with competence in design to the overall quality of the built environment, irrespective of planning laws and other regulations designed to impact on the built environment. Again, the range of estimates of net benefits is from zero to modestly positive.

CONCLUSIONS

The first conclusion is that there are net benefits associated with current regulation when compared with an unregulated situation, contrary to the conclusions of the Commission. Costs are very small. Benefits in consumer protection and spillovers are difficult to assess, and probably small, but possibly greater than costs. However the benefits to exports and imports in overcoming informational problems are more considerable and clearly produce a net benefit situation.

Alternative approaches to regulation could generate greater net benefits than the current situation. In particular a national approach to regulation and a reassessment of regulation of ownership could eliminate most costs. The development of a system of self-regulation could offer an alternative to certification in the longer run, but even the Commission recognises that it would take time to establish the acceptance of such a system. It may not be acceptable internationally.

Ainsley Jolley

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