

**PUBLIC CONSULTATION SUBMISSION**

to

**PRODUCTIVITY COMMISSION**

on

**REVIEW OF LEGISLATION REGULATING THE  
ARCHITECTURAL PROFESSION (DRAFT REPORT)**

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<b>Contents</b>		page
	Executive Summary	3
	Introduction	4
<b>1.</b>	<b>Draft Report Critique</b>	<b>5</b>
<b>2.</b>	<b>Weaknesses in Draft Report</b>	<b>8</b>
<b>3.</b>	<b>Marketplace Expectations and System Objectives</b>	<b>14</b>
<b>4.</b>	<b>Legislative Revision</b>	<b>16</b>
<b>5.</b>	<b>Recommendations</b>	<b>18</b>
	References	19
	Contact Information	20

..... *"For I am nothing if not critical".*      *Othello*

*For the purposes of this submission the use of terms such as 'architect' and the wider industry phrase 'building design and related services' field share their context with the Productivity Commission's draft report.*

## **Executive Summary**

This submission responds to the Productivity Commission's draft report reviewing legislation regulating the architectural profession in Australia. The report recommends that current legislation be repealed.

Concerns for the profession and community are detailed in this submission. The Commission's report certainly validates the overhaul of current legislation, with its inevitable flow on to professional associations. Unfortunately, the resultant visual, cultural and environmental damage, which is impossible to quantify at the outset, has been neglected.

Therefore, this weighty process must be undertaken with deep consideration with a view to creating a system where persons acting both as individuals or as part of the wider community benefit.

The Commission's report contains inaccuracies, observations and assumptions which may be misleading. Usually the bias of these points argues for the repeal of Architects Acts. This report addresses the imbalances and presents a case for review and change into a national legislative system.

Tertiary education would suffer greatly under a deregulated system through a lack of local and overseas student participation. The potential loss of educative and cultural exchange along with regional leadership is of grave concern. Will we become an architectural backwater in the global marketplace?

Consumers are increasingly aware of their rights regarding access to information on goods and services. The Commission's report alerts us to some confusion which exists in the current system.

It is recommended that a revised national system to regulate all practitioners be designed so local and foreign consumers, builders, statutory authorities and other professional bodies are able to engage with a coherent industry group.

## **Introduction**

This submission has been prepared in response to the Productivity Commission's draft report released in May 2000. The report reviews legislation regulating the architectural profession in Australia and ultimately recommends the current legislative instruments be repealed.

This raises many concerns for the profession and the community which are detailed in this submission. As a practising architect, I do not reject the notion of legislative review undertaken in the spirit of advancement. In fact, the Commission's report makes a good case for an overhaul of the current mechanisms of legislation, with its inevitable flow on to professional associations.

However, in architecture as in life, the simplest, most effective solutions are not easily arrived at, and most often not quickly. Rather they require much refinement in order to deliver the best outcome after consideration of conflicting interests. Therefore, this weighty process must be undertaken with deep, unbiased consideration with a view to creating a system where persons acting both as individuals or as part of the wider community benefit, most likely for reasons not altogether obvious at the outset.

This submission addresses the issues raised by the Productivity Commission's draft report at several levels.

- Section One provides a critique of the draft report and attempts to correct some inaccuracies and comment on sweeping observations and perceived assumptions;
- Section Two outlines weaknesses in the report where conflicts with the Commission's own terms of reference exist among loosely founded information as to the preferences and architectural abilities of consumers;
- Section Three looks to a better system by outlining the basic objectives of a balanced building design and related services marketplace;
- Section Four proposes alternative systems along with how consumers and service providers at all levels may wish to exist in the procurement and delivery of these services;
- Section Five outlines recommendations to the Productivity Commission.

## 1. Draft Report Critique

Although extensively researched, the Commission's report contains some inaccuracies, broad observations and assumptions which if perceived as fact may lead to bias in the arguments. Interestingly, the content of each of these items generally undermines the argument for the retention of any form of regulation of the architectural profession in this country.

These occurrences, which are of concern in the fair and democratic debate of this important issue fall generally into the two categories of 'terminology' and 'tone'. Both are powerful tools in providing direction in the formulation of an argument particularly when mostly contained in the report Overview (draft report p.xv) possibly the most frequently accessed section, particularly by the general public.

There are fundamental errors in terminology used in the report. These may lead to inaccurate interpretation by some parties, particularly consumers and should be rectified:

- In a "traditional architectural service" (draft report p.xx), architects do not provide "supervision of construction services" (draft report p.xix). Architects inspect the building works as the client's agent under the provisions of a contract, the builder supervise the work;
- The "planning laws" referred to (draft report p.xxvii) are not laws but are guidelines within which to work, allowing choice and offering alternatives;
- The report includes a quotation from a submission provider (Ovie Taylor, sub.376 p.1 - draft report p.37) listing famous names as being non-architects who designed buildings. In this the contributor and the Commission, by including the contribution, seem to miss the point and appear to contradict themselves. The examples presented (Greenway, Burley-Griffin and Wright) all practised or had substantial careers at a time when Architects Acts did not exist and therefore they were not restricted in the use of the term. That these men were exemplary in their practice is no basis for the argument for de-regulation.

It should be recognised that while these points are relatively minor in the overall debate they are presented in the interests of fairness.

Upon reading the report there is an unmistakable tone for the predisposition to repeal Architects Acts:

- The average salary for an architect is said to be low relative to other comparable professions, then a figure of \$54,000 is quoted as the median salary. Average and median are not the same statistically and this is misleading to the point that the public, who do not know the subtleties, (draft report p.74) may think that the average salary for an architect is \$54,000. (draft report p.xx) Little wonder the general public look upon architects as expensive not to mention 'well off';
- There is a finding in the report Overview (p. xxvii) which says "the quality of the built environment may be better addressed by planning laws which balance community interests". Planning 'laws' which are actually guidelines are in themselves subjective and therefore open to wide interpretation and outcomes. There is no end to the list of applications approved apparently in contravention of what may be the perceived thrust of the guidelines where interpretation and justification of a design submission has lead to an unexpected result. Planning guidelines differ markedly from building control rules in terms of flexibility. To allow the quality of the built environment to be solely protected by planners, who have no training in the subtleties of building design and therefore building quality, would be to say that an architect or a building designer can offer nothing more than a standard solution, after all an architects duty extends well beyond simply achieving council approval (RAIA Practice Notes AN13.00.400);
- Apparently consumers "regard particular services provided by non-architects as closely substitutable for those provided by architects". (draft report p.38). There is, of course, a difference. However, the report does not help to clarify this since it lists a finding (in the margin) which states that "other service providers *are* ... substitutable" (draft report p.xix);

- If non-architects are as substitutable for architects as is purported (draft report p.38), the potential for conflicts of interest between conscientious architects and unscrupulous clients (draft report p.76) would not be diminished and would still exist between a non-architect his or her client;
- Also, if a non-architect proves an equivalent skill level, the current system provides for persons without a degree to register as architects after completing certain requirements.

The following section develops these points in the wider context of the debate. Subsequent sections develop thoughts on system objectives and alternative solutions involving legislative review.

## 2. Weaknesses in Draft Report

The draft report explains the task of the Commission as one of assessing “whether current legislation ..... promotes the public interest or whether feasible alternatives could do better.” (draft report p.xv) To do this most effectively there must be a discourse and an understanding as to what the public interest exactly is and how any feasible alternatives may work and impact on that interest.

The definition given from the Australian Concise Oxford Dictionary is that an architect is simply a “designer who prepares plans” (draft report p.3). This sets up an idea that architects are merely glorified drafters who will draw up your modest house plan for an exorbitant fee. Perhaps there should be a reinterpretation and application of the root word identifying the architect as chief builder.

Government intervention is not ruled out in the report (draft report p.59) as long as the benefits of such intervention can be demonstrated to outweigh the costs. To address this properly we need to define factors to be included in assessing this cost. Is it purely economic? Or do we have the maturity to consider the implications of inappropriate design as a considerable cost and as a commodity too valuable to risk. Obviously structural issues and those of sound building practice need to be and are addressed, however, this country’s relatively low appreciation for outstanding design and its reputation for ‘making do’ with the minimum should set anti-complacency alarm bells ringing.

Australia is not the only country that has legislation restricting the use of the title architect. (draft report p.3) The public should be made aware that many nations have this form of restriction, most of Europe, the UK and the United States are examples among many others. Interestingly, the Commission’s report, only raises the point that the UK repealed its Act in 1994 forgetting to clearly point out that it has since been revised and re-enacted.

The report is not clear as to the level of inconsistency in registration procedures and access between countries. (Draft report p.106) However, at the very minimum this proves that comparable, that is to say leading, countries do at least have registration systems.



While recognising Australia's international obligations particularly in the area of regional development, I must question the "obligation to ensure that (our system) of regulation of architects is as open, transparent and low cost as possible to foreign service providers". (Draft report p.109) Where is the protection for the Australian profession? Particularly since there are many limitations imposed by our trading partners on even the most qualified of Australian architects wishing to practise overseas as is borne out in the report. (Draft report p.106)

Since there is no restriction on service provision itself, competition as to price and product already exists. The report's suggestion that consumers will receive "lower prices and better levels of service" (draft report p.5) assumes this does not exist in the present. This is clearly not the case as a sole practitioner or firm, architect or not, is even now constantly in competition with his wider peer group. A consumer is free to negotiate with any practitioner and assess the level of service, end product and fees charged on their merits then engage their chosen professional accordingly.

How do "costs imposed by title provisions" result in "constraints in the information provision process" and how does it "inhibit consumers (from switching) between architects and other service providers"? (Draft report p.80 - Note: these services are again listed as "broadly substitutable".) There appears to be a circular argument here. If consumers do not generally realise the difference between architect and non-architects (draft report p.67) but have the capacity to do the research and then differentiate (draft report p.56) and then engage a practitioner they feel meets their needs, architect or not, how are consumers prevented from "switching"? (Draft report p.80)

The "information problems across major consumer groups" (draft report p.39) may arise due to several circumstances. These may relate to the inaccurate marketing of properties for sale as 'architectural' in an attempt to boost their value or to the assumption that just because someone has a drawing board he or she is an architect or it may just be a lack of consumer awareness of options in the market place and a consumer's blind approach that they must procure a building 'off the shelf' because of a mind set that architects or indeed any design professional is too expensive or too wacky or way out or just out of reach.

A desire to fully overcome information deficiencies in the building design and related services market seems to be a goal of part of the Commission's report. Is the real goal here to turn all service providers into 'off the rack' suppliers, assuming this will guarantee the consumer knows exactly what they will get for their money? Perhaps like buying a car or supermarket shopping. However, this approach deletes the human search for something beyond the functional and eliminates the journey undertaken by clients seeking professional and specific design services. (Draft report section 4.3 p.52) A notion taken up by world renown architect Renzo Piano who said "Architecture is a socially dangerous art because is an imposed art. You don't have to read a bad book ....but the ugly block of apartments in front of your house leaves you with no alternative" (Piano p.12) Why would you leave such a dangerous commodity to the untrained?

Architecture and design is much more than the public knowing what they like.

The draft report suggests that community and built environment damage from inappropriate design "is not likely to be catastrophic and its less likely to occur because consumers generally know what they like". (draft report p.xxiv) This is an extremely worrying and naive observation since the Commission's own terms of reference ensure consideration of the "quality of the built environment and government legislation and policies relating to ecologically sustainable development." (draft report p.iv) Does the Commission expect consumers to be fully conversant with this? Consumers are not designers and they have little basis for formulating an opinion on relevant and appropriate architecture beyond an immediate fashion or trend.

If the consumer knows what they like why not just teach them technical drawing and let them be their own architects.

The totality of the visual, cultural and environmental damage would be impossible to tell at the outset. Unfortunately, once built it will only then hit home, and since buildings are expensive, rarely will anyone pay to improve or upgrade their aesthetic presence or functionality as it is out of the scope of the general public. Therefore, "we must ensure (building design) is in the stewardship of those best educated and trained to deal with it." (Sub. 128 in draft report p.50)

“The setting of standards ..... is based on a view that either consumers cannot obtain information or, even if they had sufficient information, would choose not to protect themselves adequately” (draft report p.67) Clearly people who are in this category are in need of professional advice via a system which makes sure they seek it. There is no denying that lack of information combined with complacency and a lack of protection is a recipe for disaster.

Even though the Acts do not contain a direct reference to the protection of the built environment (draft report p.12) they do so indirectly in a similar way to how the licensing of electricians cannot be quoted directly as preventing people from being electrocuted, however, the level of safety it achieves indirectly does just that.

The Commission’s report states that “restricting the performance of certain tasks to a particular group .... eliminates competition from other groups who might otherwise perform similar functions.” (Draft report p.52) If this is to be applied to the building design and related services field, does it work when reversed? If an architect wanted to act as a builder would he or she have to be licensed? Of course. So why is there a proposal to let virtually anyone capable of holding a pencil design and administer the production of buildings? For example, why is it that an electrician or plumber on a project must be licensed? In fact, to install a telephone you must be licensed by Austel but it is seen as unimportant to regulate the practice of persons who labour over the very gestation of the building.

If building design practitioners maintain such a high quality of practise including design integrity (draft report p.37) while suffering from misrepresentation (draft report p.81) then perhaps they should also be subject to the rigours of registration therefore completing the picture for consumers as a coherent marketplace from which to select a practitioner. It is a huge assumption that current non-architects will not use the title architect under deregulation as they already have a label (draft report p.139). This is not a threat but it may be a solution. This thought is developed further in Section 4 Alternatives.

The term “entrepreneurial providers” (draft report p.111) in the building industry is of concern. Already, the industry has an extremely high level of complaints against head and sub-contractors. Where is the benefit in effectively forcing a downward spiral in professional fees wherein all hope of quality of documentation is lost effectively depriving the client and his agent (architect) of control because ‘its not on the drawings’ thus handing almost uncontrollable power to the builder.

The shifting of the architects role in situations such as Design and Construct, for example does not support the argument for de-regulation either. (Draft report p.43) If a project is to be run by a project manager or builder who then seeks design services, this person then becomes the consumer and is free to seek out a level of expertise as is believed to be required. That consumer may go to an architect or not and if so should know how to compare architects and non-architects.

In a reference to providers of expert services, motor mechanics are used an example. This in itself is an amusing comparison as the average mechanic does not design the engines he works on. However, mechanics are said to “signal their quality and standards of behaviour to consumers .... by endorsement by independent agents, guarantees, etc.” (Draft report p.55) This goes along with idea developed through the report of branding ones services to ensure recognition. By the Commission’s own admission this requires the consumer not only to believe in the service provider but also in the endorsing agency. (Box 4.1 draft report p.54) Would this not incur more cost? Furthermore, not to belittle the safety aspect, the potential problems caused by incorrect advice regarding built form are subjective and considerably more difficult to qualify than say, an inadequate or overcharged repair to a motor vehicle and certainly more expensive and time consuming to rectify.

Why do government buying practices currently exclude non-architects? (Box 3.2 draft report p.39) Is this an acknowledgment of skill and service? How, under a de-regulated system, will the government select architects? If not for the title then surely there is scope for non-architects to provide such services. Or are architects only selected currently to support government legislation?

Finally on education. The tertiary education system would suffer greatly under a deregulated system. Who would bother doing a 5 year full time architecture degree, with all its additional HECS, if you carry on the same practice and use the same title by doing a lesser qualification in a shorter period of time.

The potential loss of educative and cultural exchange available through interaction with overseas students is of concern. (Draft report p.65) Australia is seen to be a leader in the provision of architectural education and professional services among our neighbouring countries. This is based upon a recognition of our system of tertiary education, professional development and registration rigour that our architects are put through. If deregulated, Australia will not be seen as the “clever country” architecturally. (Draft report p.89) More likely a laughing stock or backwater in the global environment where standards are constantly being raised.

Deregulation certainly implies a sense of complacency and reinforces the great Australian guarantee - ‘she’ll be right’. The world’s value of our currency is affected on a daily basis simply by the words of major financial players, merely hints of things that may not even happen. Is there not scope then to believe that the very hint of deregulation in our country will devalue education export potential and quality architectural services based on the perception that our system is weakening.

### **3. Marketplace and System Objectives**

There are several objectives fundamental to the marketplace of building design and related services. These objectives amount to an expectation of responsibilities recognised and fulfilled by both parties in any transaction, namely the service provider and the consumer. These objectives are simple and few and could be broadly applied to many markets.

As the Commission's report highlights, consumers are increasingly aware of their rights and privileges regarding access and availability of information on goods and services in the market they are entering for the long or short term. Consumers demand to know the pros and cons to understand what they are getting themselves into. If the Commission's report makes one thing clear it is that confusion does exist in the building design and related services field from the consumer's perspective.

Therefore, in revising the system, with or without regulation, we should design it so consumers, builders, statutory authorities and other professional bodies are able to establish a clear picture of the workings, that is the roles and responsibilities of all parties, practice standards and ability for recourse.

To this end some of the fundamentals of such a system are listed below:

- Transparency from beginning to end;
- A clear understanding of the qualifications held by the practitioner;
- Finer details of their education and training;
- Limitations on practice (geographically, building size or value);
- Professional insurance;
- Details as to the operation of the controlling body;
- Complaints mechanism;
- Disciplinary measures;
- Method of integration with other professional bodies;
- etc.

Many of these aspects are not well understood by the majority of the general public who, many unwittingly, rely on the person calling themselves an architect to actually be a practitioner capable of completing a building. Not an ill prepared graduate fresh out of university or TAFE who by completing a course is allowed to practice. A registration system sets the minimum education level and practical experience requirement. This is not unlike the licensing of builders as discussed earlier. A consumer, having identified the builder's licence, can supposedly relax based on this reassurance. To rely on voluntary membership of an organisation in order to address bad design or worse, malpractice, is too loose a protective system for a consumer and the built environment.

#### 4. Legislative Revision

Without a regulatory system the consumer and the built environment are susceptible to violation. This does not automatically amount to malpractice but since the work carried out in this field becomes built form there to exercise extreme caution. The responsibility falls on architects and building designers alike to manage their clients and projects in the pursuit of that goal.

The justification for the removal of registration, according to the Productivity Commission is the cost versus benefit argument. It is worth noting that taxpayers do not fund the current system, architects do. "The worst enemy of modern architecture is the idea of space considered solely in terms of economic(s)". (Frampton p.329) Is economics bound for ultimate domination of our lives and our surroundings? We are happy to bear the costs of other forms of environmental protection. For example, the costs involved in everyone having to change vehicles to suit new fuel types designed to slow or stop pollution damage. What about visual damage? Maybe we should make more lead fuel and deregulate architects then at least the pollution will screen the ugly buildings.

It is out of the scope of this submission to propose a complete model for a new system. However, there are key points which when developed contribute to satisfying the objectives outlined in the previous section. These include:

- National Architects Act with controlling body undertaking an active role in promoting the entire system from registration to discipline and complaints procedures (similar to the UK system);
- National registration for all practitioners at various levels with various entitlements (eg. architect, architectural designer etc.). If all practitioners are registered at an appropriate level there would be a simpler system for the consumer to engage with. As building design practitioners are said to maintain a high quality of practise including design integrity (draft report p.37) then entering registration should not be a problem thus completing the picture for consumers as a coherent marketplace from which to select a practitioner;



- Amendment of other relevant legislative instruments to ensure that all buildings are designed by a practitioner registered at the appropriate level;
- Revised use of derivatives of the word 'architect' as applicable to each level of registration;
- Revised Board and Committee membership to include the public;
- Revised or removed restrictions on ownership of enterprises provided architectural work is under the direction of an architect;
- Mandatory professional insurance;
- Mandatory professional development;
- Removal of restrictions on advertising beyond professional and ethical guidelines.

An example of legislation setting up restrictions based on accreditation is South Australia's Development Act 1993. In this the assessment of certain building types and performing of certain functions is restricted to practitioners who have the achieved the appropriate level of accreditation. The levels used are Building Surveyor, Assistant Building Surveyor and Building Surveying Technician. A similar system may work in the building design field.

## 5. Recommendations

The fact that consumers do not have to engage a registered practitioner weakens the system of protection of consumers (draft report p.69). Unfortunately, the “consumers who ..... are most in need of information, appear to be unaware of the certification system”. (draft report p.74)

This situation could be redressed by ensuring all practitioners are registered to operate at their appropriate level of the market. As discussed in this submission, we license builders. Shouldn't this be lead by the architect being subject to statutory compliance?

It is hoped that the points made in this submission bring to the Commission's attention valid concerns on what is seen to be a weakened system proposed by the draft report. While there are salient criticisms of the current position of the architectural profession, such as having “fostered an inward-looking attitude” (draft report p.147) the removal of registration does not advance the interests of the built environment, the wider public (draft report p.xv) or our national status. It is not the solution.

There is no quick fix to the issues raised by the Commission, this fact belies the importance of the topic. Therefore, it is recommended that the Productivity Commission form a review panel to design and refine a model system based on the points made in this submission to exemplify our abilities individually, as a profession, as an industry and as a mature and leading nation.

## References

Productivity Commission 2000, *Review of Legislation Regulating the Architectural Profession*, Draft Report, Melbourne, May 2000.

Hughes, Robert, *Nothing if not critical*, London, Harvill, 1995.

Piano, Renzo, *The Renzo Piano Logbook*, London, Thames and Hudson, 1997.

Frampton, Kenneth, *Modern Architecture - A Critical History*, Singapore, Thames and Hudson, 1980.

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