

**SUBMISSION**  
**TO THE**  
**PRODUCTIVITY COMMISSION**

**REVIEW OF LEGISLATION REGULATING**  
**THE ARCHITECTURAL PROFESSION**

**December 1999**

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Paper dated November 1999

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## EXECUTIVE SUMMARY

The Architects Board of South Australia supports the retention of legislation regulating the use of the word “architect” as being in the public interest.

The Board supports the model Legislative Guidelines prepared by the Architects Accreditation Council of Australia (“AACA”). These Guidelines set out model legislation the content of which has been adopted by all State and Territory Registration Boards. A copy of the Guidelines has been submitted to the Productivity Commission with the AACA submission and, therefore, the Board has not included this document with its submission.

The Board believes, in the interest of efficiency, that the most beneficial form of legislation would be for National Federal legislation to be introduced with one controlling independent authority responsible for the administration of legislation.

## INTRODUCTION

Regulation of architects by way of registration and the regulation of the practice of architecture was introduced in South Australia in 1939 with the enactment of the Architects Act.

A summary of the provisions of the Act are as follows:

- Administrative provisions
- The Register of Architects
- Registration of Architects
- Professional Misconduct
- Appeals and Legal Procedure
- General Meetings of Architects
- By-laws
- Annual Subscriptions
- Miscellaneous Matters

The legislation relating to registration of architects was reviewed by the Trade Practices Commission in 1992. The review was carried out on a national basis and resulted in the Commission concluding that “..... the architectural profession’s regulatory arrangements do not generally inhibit competitive activity in the market for building design services”.

In 1998 the South Australian Government complied with an obligation placed upon it under Clause 5 of the Competition Principles Agreement. The State Government appointed a Review Panel to review the content of the Architects Act and, in particular, whether there were any anti-competitive sections which required consideration.

The Review Panel circulated a draft to those individuals who had made submissions to the Panel and subsequently prepared a Final Report which was submitted to the Minister responsible for the Architects Act, the Hon Diana Laidlaw. The understanding of the Board is that the Report of the Review Panel has been held in abeyance pending the outcome of the Productivity Commission’s Review. The content of the Architect Review Panel’s Report has not been made public and the Board is unaware of its content or recommendations.

ISSUES PAPER  
NOVEMBER 1999

**FRAMEWORK**

1. The Market for Architects.
2. Clarifying Legislative Objectives.
3. Restrictions on Market Structure.
4. Restrictions on Conduct.
5. Disciplinary Procedures.
6. Market Information Problems.
7. Spill Over Effects.
8. Assessing the Net Public Benefit.
9. Alternatives.
10. Consistency Between Jurisdictions.
11. International Considerations.

## 1. The Market for Architects

*Is this an appropriate definition of a profession as it applies to architects?*

The Board considers the definition of a “profession” as defined by the Australian Council of Professions as entirely appropriate in reference to Architects and other professions.

*What differentiates the market for architectural professional services from non-professionals?*

The public recognition of the level of training and practical experience required to become a registered architect, and the on-going demand for the services of registered architects indicates the public perceives a benefit in dealing with individuals or organisations which have broadly based expertise required of a registered person. Despite competition from other sectors of the design community, the professional status of architects, their independence and professional and ethical standards, and high level of training and experience ensure that as a group they are entitled to be differentiated from other sectors of the design community.

*How broadly (or narrowly) should the market in which architects compete be defined?*

The market in which architects compete should be broadly defined to ensure all aspects of an architect’s tertiary education and practical experience are encompassed. The market is not restricted solely to the design of buildings but is far wider and provides professional advice and services in areas such as contract documentation, contract administration, town planning, environmental services etc.

*What occupations compete with architects? In which market sectors (eg commercial and residential) do they compete? Do the functions performed by architects differ according to market sector?*

Occupations which compete with architects include building designers, draughts persons, town planners, engineers, landscape architects, project managers and builders.

The market sectors in which they compete are as broad as the market itself and include residential, commercial, industrial, civil design, town planning etc.

The functions performed by architects obviously differ in relation to market sector as each sector has its own specific requirements. Obviously, the work performed by an architect in relation to a single commercial dwelling varies significantly from the functions performed as lead consultant for a major multi-storey commercial building.

## **2. Clarifying Legislative Objectives**

### *The objectives of the Architects Act in South Australia*

“To provide for the registration of architects, to regulate the practice of architecture and for purposes incidental thereto”.

It should be noted the Architects Act does not prohibit unregistered individuals from performing design or architectural services but prohibits them from describing themselves as architects.

*Are the existing objectives appropriate? If not, what should they be?*

The Board does not consider the existing objectives as entirely appropriate as no reference is made to public benefit.

The Board has no objection to the following wording:

1. To ensure that architectural services are of a standard that will protect and enhance the public’s economic, social, cultural and environmental interests.
2. To ensure that architectural services are provided by and under the control of architects appropriately qualified by virtue of their education, training and experience and who have the necessary competency and resources.

*Is it important that there is consistency of objectives across jurisdictions?*

The Board believes that it is important to have national consistency (as it is for all the legislation relating to the regulation of the title “architect”).

## **3. Restrictions on Market Structure**

*To what extent, if any, do registration requirements restrict the supply of architects? For example, are training and other requirements appropriate? Does the minimum age requirement constrain entry to the profession?*

The Board believes its eligibility criteria for registration are appropriate and that without the appropriate academic and practical experience, individuals are not able to obtain the overall standards required to ensure the public interest is protected.

The Board believes the existing requirement for tertiary qualifications and practical experience are entirely appropriate for registration.

There is no minimum age requirement constraint in South Australia.

*To what extent do any of these restrictions impede architects from other countries practising in Australia?*

Architects from other countries are able to achieve registration in South Australia (and other States) if they can demonstrate academic equivalence and have acquired the relevant practical experience and passed the appropriate practical examination equal to that required of local residents.

It should be noted that the South Australian Act (Section 32) states that a natural person who applies for registration shall be entitled to be registered as an architect if he proves to the satisfaction of the Board that (a) he is of good character and that (b) he is registered as an architect under the laws of the United Kingdom or New Zealand. Whilst the introduction of the Trans-Tasman Mutual Recognition Agreement, which has been now enacted by both the Governments of New Zealand and South Australia, makes specific reference to the acceptance of professionals registered in New Zealand being entitled to a separate registration in South Australia, it does not extend to countries other than New Zealand.

The South Australia legislation specifically provides for registration by persons who are registered in New Zealand. This was included in legislation many years prior to the enactment of the Trans-Tasman Mutual Recognition Act.

There are various mechanisms available to architects from other countries to enable them to obtain registration in Australia. These procedures which are established by AACA ensure that individuals who have equivalent academic and practical experience can, by satisfying the requirements established by AACA, obtain registration in this country.

The process involves a review of the academic equivalence of the overseas applicant. In addition, if the academic qualifications are not deemed to be of an equivalent academic standard to locally accredited courses at State tertiary educational institutions, any applicant is able to sit for the National program of assessment which is a process designed to test the practical experience of the applicants to ensure equivalence to an Australian registered architect.

*Are all registration requirements necessary to achieve the legislations objectives?*

The Board strongly believes that the current registration requirements which encompass academic and practical components are necessary to ensure the legislations objectives.

*What effect does the restriction on the use of the title "architect" have on the supply of architects for similar services to the market? How do these types of restrictions affect the provision of architectural services? What effect do these restrictions have on innovation within the profession?*

There are no restrictions on the use of the title "architect" which affects the supply of architectural or similar services to the market due to competition between non-architectural providers of services and architects.



Whilst there no restrictions, the educational content of the five year tertiary academic course encourages innovation. The courses are designed not only to address technical content but social, environmental and philosophical issues associated with architecture in its broadest sense.

#### **4. Restrictions on Conduct**

*Has this type of restriction impeded competition between architects in practice? What has occurred in those jurisdictions where advertising restrictions have been removed?*

The Issues Paper refers to restrictions in certain Architects Acts on the conduct of a person, partnership or company and are eligible and wish to use the title “architect”. The South Australian legislation refers specifically to people who are registered not just those who are eligible and wish to use the title “architect”. The restrictions contained in the South Australian Act refer to advertising services and the Board believes that these are unduly restrictive and that the provisions of the Fair Trading Act and the Trade Practices Act are sufficient to protect the public in relation to advertising by which architects and that By-law 38.7 could be appealed.

*Has this type of restriction impeded competition between architects in practice? What has occurred in those jurisdictions where advertising restrictions have been removed?*

The Board does not believe that current by-laws have restricted competition between architects as there has been a level playing field relating to all registered architects. The Board is unable to comment in relation to the effect of removing advertising restrictions in other jurisdictions.

*Have these requirements acted to restrict competition within the profession? What is their effect in practice?*

Again, the Board notes that they do not believe the restrictions in relation to administering contract conditions and supplanting By-law 38 (1)(b) has restricted competition within the profession. Their effect in practice is negligible in today’s competitive and commercial environment. The effect of these By-laws is seen to be negligible.

#### **5. Disciplinary Procedures**

*Could cases of misconduct be adequately handled by means other than the Architects Acts, for example, by the RAIA or the Trade Practices Act 1974 (Parts IVA and V)?*

The Board does not believe cases of misconduct could be handled by the RAIA. This body was established and exists to represent its members’ interests and it is noted not all registered architects are members of the RAIA and, therefore, that organisation is not in a position to protect the public.

Allowing the RAIA to discipline registered individuals would be inappropriate due to the conflict of interest as to whom they represent, their members or the public interest. The Board fully supports the separation of the investigation and disciplinary powers of the Board to ensure that issues of equity and procedural fairness are accorded to registered individuals.

The circumstances giving rise to problems due to poor and inadequate building design and contract administration, particularly in the commercial sector of the market are often extremely complex and require, in addition to the usual legal or quasi-legal participants in the conduct of the hearing, experts in the architectural design and building construction process. For this reason, the Board suggests that a specialised tribunal would be justified, on which two architects, known for their skills, expertise and objectivity, would serve in addition to a legal representative.

*Are there any other restrictions in the Architects Acts, and related regulations or By-laws, which impede competition?*

The Board does not believe there are any other restrictions contained in the South Australian By-Laws which impede competition.

*Are there restrictions in other State or Territory legislation (eg Building Acts or By-laws) which impede competition in the market in which architects practice?*

The Board is not aware of any restrictions in other legislation which impede competition.

## **6. Market Information Problems**

*In the absence of Architects Acts and, in particular, restrictions on the use of title, would there be information problems in the provision of architectural services? If yes, in which market sectors? Who would be affected?*

In the absence of Architects Acts and if there was no restriction on the use of the title of architect, the public would be uncertain as to the level of competency and expertise provided by individuals calling themselves architects. Whilst it might be that the educated, sophisticated and commercial user of professional services would be able to differentiate by knowledge and experience between individuals and corporations who are able to provide the services, the general public could be expected to be disadvantaged due to information asymmetry and their inability to make a judgement as to the experience and expertise of a professional. Protection of the title of architect enables the public to have a measure of confidence in the abilities of persons who are registered.

*Do the Architects Acts resolve all information problems? If not, what information problems are unresolved and how should they be addressed?*

There may exist confusion in the public domain as to the difference between the role of the RAlA and the Board. A number of Boards are now being more pro-active in educating the public via various means as to the notes to the Board. The South Australia Board is considering establishing a Website to provide information relating to the activities of the Board. In addition, a limited print media advertising could be considered as a further method of educating the public.

*Is there other consumer protection legislation (eg the Trade Practices Act 1974 (Part V) and Fair Trading Acts) which provides the same protection as the Architect Acts? What are the advantages and disadvantages of each?*

The Board considers the Trade Practices Act and Fair Trading Act provide some protection to the consumer in relation to certain issues. However, the continued legislative protection of the title architect provides a further level of protection to ensure that in the first instance that those individuals or corporations who are registered have met minimum standards.

*Are there significant additional guarantees of competence and quality that purchasers receive from using the services of an architect registered under the Architects Act which are not received from a member of the RAIA? If yes, please elaborate. If not, from a consumer protection perspective, what is the advantage of the Architects Acts?*

There are no additional guarantees of competence and quality that purchasers receive from using the services of a registered architect compared with a member of the RAIA, as qualification for registration as an architect is a pre-condition of corporate membership of the RAIA.

However, we would point out that the aim of the RAIA is to service members' interests and not the public and this is of paramount importance when considering their role. The cost of joining the RAIA may also be a barrier. The RAIA does not have legislative support for its activities and has only disciplinary powers to ultimately exclude individuals from membership.

*What is the most effective and efficient way of addressing information problems? Alternatives to the Architects Acts might include the provision of information targeted to specific market sectors in consumer publications, media reports of the Internet. Could the information problems be resolved by enhancing the information provision activities of the RAIA?*

The Board considers that dissemination of sufficient information to all sectors of the public via various media would be expensive and a simplistic approach to information provision. This approach could be considered a "scatter gun" solution and presumes potential consumers are aware of the issues of competence and quality and have the expertise to research the issues prior to making an informed decision.

It is the opinion of the Board that the better approach is to legislate for a minimum standard so that all consumers may be protected, even if they are unaware of the criteria which have led to the registration of a professional architect.

The problem with enhancing the information provision activities of the RAIA is one of significant cost to the members of the RAIA.

## **7. Spill Over Effects**

*What are the risks associated with the provision of architectural services? What are the potential consequences of those risks? Who bears those risks? What mechanisms are in place to manage or reduce them?*

The risks associated with the provision of architectural services rest largely with the community. Poor design or architectural practice has a long lasting legacy for the community. The five year academic training required of a registered architect ensures by virtue of the academic course content application to other than technical disciplines. Wider issues such as the overall built environment, environmental issues, cultural and aesthetic aspects are given due consideration. The tertiary academic courses provided in architecture can be contrasted with the TAFE drafting courses which provide a level of technical competence without teaching the broader issues.

*Given existing building and planning regulations, can Architects Acts be justified on the grounds of correcting a market failure in terms of health and safety effects?*

Irrespective of building and planning regulations, the Board believes the issues of health and safety are significant matters which registered architects are trained to consider. Consumers and the public can expect a higher degree of expertise when dealing with an architect registered under current legislation. This recognition encompasses a more than strict adherence to the various legislative provisions or Development Acts etc. and recognises the contribution the education of architects has on the wider environment and public amenity aspects of architecture and consumer protection. It is these wider considerations which the Board believe are of public benefit.

*Are there other potential public interest benefits of the legislation of architects, for example, social or cultural benefits? In what way does the legislation provide for these outcomes?*

The content of tertiary academic courses as referred to above provides significant benefits to the public beyond the more technical requirements of registration.

## **8. Assessing the Net Public Benefit**

*For example, to what extent do private gains accrue to architects because they are registered under Architects Acts? Do current restrictions result in higher fees being paid by (some or all) purchasers of architectural services? If yes, to what extent?*

The Board does not believe private gains accrue to architects because they are registered under the Architects Act. The market is competitive for the provision of architectural services and, as such, market forces dictate to a degree the level of fees payable by consumers. The Board does not believe current restrictions result in higher fees being paid by some or all purchasers of architectural services.

*What are the costs to architects for registration (fees and training)?*

Refer Appendix B.

*In the absence of Architects Acts, what would be the level of service quality and architectural fees? How could consumers inform themselves about the quality of particular architects?*

It is not considered there would be any significant change to the level of fees or service quality should there be no Architects Acts as there already exists competition both within the architectural profession and within the wider building design services sector. Consumers would inform themselves about the quality of particular activities, as they do now by assessing existing work, advertising, personal referral etc.

## **9. Alternatives**

*Which if any, of these alternatives would be preferable to existing arrangements and why? Please elaborate providing information of the cost and benefits as outlined in Section 3.4. For example, to what extent, if any, would enhancing legislation to regulate the practice benefit the public?*

The Board supports the AACA and legislative guidelines which advocate nationally consistent legislation. The Board recognises that this can be achieved either by way of introducing Federal legislation or, alternatively, adopting uniform State legislation.

The Board would support either a National Board administering Federal legislation or State Boards continuing to administer State based legislation. It has not been possible within the time constraints to adequately cost the alternative structures, however, this could be a significant factor in determining the most appropriate format.

The Board believes strongly that an independent group adequately represented by registered architects, members of the public as consumers, and academics the appropriate structure to be responsible for administration of any legislation. The important inclusion of representation from the academic sector is to ensure reformed input to the assessment of tertiary academic course content. There are considered to be advantages in having one National registering authority from an international perspective both from the viewpoint of overseas countries liaising with one body rather than numerous State/Territory based Boards, as will the Boards being able to speak with one voice on international issues rather than the covert position via the AACA which has no legislative backing.

The Board does not believe the RAIA is an appropriate body to be responsible for administration of any legislation. The RAIA is responsible as a professional body for representing its members' interests and not necessarily those of the public.

*What impact do these alternatives have on the ability of Australian architects to compete in world markets?*

It is not considered any of the legislative proposals considered in the Issues Paper would have significant impact upon the ability of the Australian architects to compete in world markets. The critical issue in relation to overseas markets is the fact that Australia has and continues to have a registration procedure which enables overseas countries to rely upon the academic and post-tertiary experience requirements of registered individuals.

*Are there other alternatives which would be more appropriate? If yes, please provide the information on costs and benefits.*

The Board does not consider there are any other practical alternatives other than those considered in the Issues Paper.

*Are there examples of similar instances where the risks are unacceptably high in the provision of architectural services? If yes, you may wish to incorporate these in your alternative option.*

The Board is not able to provide examples of circumstances where the risks are unacceptably high in the provision of architectural services.

## **10. Consistency Between Jurisdictions**

*To what extent is a lack of legislative consistency across jurisdictions a problem? Which areas of the Acts pose problems (eg registration, restraints on ownership of businesses) and what costs are imposed? Do inconsistencies create particular difficulties for architectural companies with branches in more than one State or overseas based architects wishing to practice in Australia?*

Whilst mutual recognition works well and is relatively effective from a Board perspective, the cost to individuals and corporate entities who wish to operate in more than State can be reasonably significant as fees may be payable on registration and renewal in each jurisdiction on annual basis. The current slightly differing legislation in each State makes it difficult primarily for corporate entities to comply with each State's legislation.

The Board believes the most appropriate solution is to enact Federal legislation or secondly, uniform State legislation. The costs of registration by the national registration body could be anticipated to be approximately the same as existing registration fees, however, it would be expected to be significantly lower than current costs of registering in each State. As previously stated, the Board fully supports the AACA legislative guidelines in relation to this issue.

We have attached as Appendix B – “Current Registration and Renewal Costs in Each State”.

*How many architects have been registered under mutual recognition?*

Thirty two architects.

*How was the process working? For example, if the process costly and time consuming? Has mutual recognition overcome problems by raising inconsistencies in registration? If not, why?*

The existing process of mutual recognition between States and Territories works satisfactorily. Each Board relies upon registration procedures current in the applicant's home State or Territory, despite inconsistencies in the legislation. Due to the AACA's role in accrediting tertiary education courses and the adoption by all States of the AACA architectural practice examination process, there is a high degree of consistency in relation to the academic and professional standards required for registration in each State and Territory. It is therefore possible for the State Board to be satisfied as to the standards required for registration in other States.

The actual process of mutual recognition is not costly or time consuming from the Board's perspective as a simple questionnaire is completed by the Registration Board in the applicant's State of registration. However, the cost and time factor required of individuals in registering in more than one State is wasteful duplication, which would be unnecessary if National legislation was introduced.

Under Trans-Tasman mutual recognition, Australian States and Territories are required to recognise architectural registration in New Zealand. AACA and the New Zealand Architect Registration Board work closely together but not to the degree that the Australian States and Territories cooperate. For example, the AACA have no formal input in relation to the accreditation of New Zealand schools of architecture.

*What extending mutual recognition beyond registration of occupation overcomes any problems arising from its inconsistencies between jurisdictions?*

The Board does not consider extending mutual recognition beyond registration of occupation would overcome any problems arising from inconsistencies between jurisdictions.

*Are there more appropriate solutions to these problems and mutual recognition, for example, uniform or harmonised legislation?*

The Board believes there are more appropriate solutions than mutual recognition and supports, as previously stated, National legislation which would overcome completely the need for mutual recognition of registrations between States and Territories.

## **11. International Considerations**

*To what extent, if any, do inconsistencies impede Australian architects' abilities to compete in the world market?*

The Board does not believe any inconsistencies in legislation between countries is detrimental to Australian architects' ability to gain work overseas. For example, architects are required by the authorities in Singapore and Malaysia to be registered in Australia prior to gaining work in those countries.

The Commonwealth Government recognises the importance of regulation of the profession in the international environment by the introduction of the Trans-Tasman Mutual Recognition Agreement which now facilitates mutual recognition of professional registration between New Zealand and the Australian States.

In addition, the Commonwealth Government has supported a regional conference held in Darwin in May, 1999 which was held at the instigation of the AACCA. This conference addressed matters solely relating to registration, recognition, educational qualifications and other issues in relation to architectural registration in the Asian region.



**THE ARCHITECTS BOARD OF SOUTH AUSTRALIA**

**SUBMISSION**

**NATIONAL COMPETITION POLICY**

**LEGISLATIVE REVIEW**

**ARCHITECTS ACT 1939**

**November 1998**

## THE NEED FOR REGULATION

The purpose of regulation of the architectural profession as it exists in Australia is to give protection to the public so they may rely on the skill implied by the use of the title "architect". It serves as a means of distinguishing those who have acquired a known level of competence in the practice of architecture through education, practical experience and examination from semi-trained or unqualified individuals. It also serves to monitor professional conduct and to protect the consumer against malpractice on the part of those who are registered.

## PUBLIC BENEFIT

The UIA (International Union of Architects) has set down the following lists of skills and abilities which it recommends as a Minimum International Standard for registered architects:-

- *"an ability to create architectural designs that satisfy both aesthetic and technical requirements.*
- *an adequate knowledge of the history and theories of architecture and the related arts, technologies and human sciences.*
- *a knowledge of the fine arts as an influence on the quality of architectural design.*
- *an adequate knowledge of urban design, planning and the skills involved in the planning process.*
- *an understanding of the relationship between people and buildings and between buildings and their environment, and of the need to relate buildings and the spaces between them to human needs and scale.*
- *an understanding of the profession of architecture and the role of the architect in society, in particular in preparing briefs and take account of social factors.*
- *an understanding of the methods of investigation and preparation of the brief for a design project.*
- *an understanding of the structural design, constructional and engineering problems associated with building design.*
- *an adequate knowledge of physical problems and technologies and of the function of buildings so as to provide them with internal conditions of comfort and protection against the climate.*
- *the necessary design skills to meet building users' requirements within the constraints imposed by cost factors and building regulations.*
- *an adequate knowledge of the industries, organisations, regulations and procedures involved in translating design concepts into buildings and integrating plans into overall planning."*

From this it can be seen that the wider issues of public benefit can be demonstrated from the comprehensive requirements for registration as an architect.

## **STANDARDS**

Central to the concept of occupational regulation through certification of title is the determination in maintenance of standards of training and conduct which both define the occupation and those who practice it.

There is little doubt that the registration of architects has been an important factor in the development and maintenance of high architectural standards in Australia.

The requirement for a natural person to obtain two years practical experience under the guidance of a registered architect, together with passing of an architectural practice examination ensures that a registered architect has a significantly higher level of knowledge and expertise than non registered individuals.

In addition to the rigorous and extensive education and post graduate requirements for registration it is possible to obtain registration via a Competency Based Assessment. This process which is uniform throughout Australia is organised via AACA which coordinates the process. Without the existence of the Boards in the various States and Territories this alternative mechanism for registration would not exist.

The rigorous accreditation procedures for recognition of qualifications in architecture play an important part in maintaining all architectural education standards. The Registration Board plays an active role in the accreditation and assessment process in the Schools of Architecture in South Australia, leading to the accreditation of undergraduate courses which is the academic component of the required qualification and experience necessary for registration. In addition there are benefits to be derived from participation in a national and international market place on an equal footing with fellow professionals. Increasingly high levels of skills are needed here and overseas in order to deal with an increasingly complex building environment. Recognition of the professional standing of Australian architects would be significantly eroded if national standards were not imposed through regulation.

## **RECIPROCITY**

A compelling reason for the continuation of registration of architects in South Australia is to maintain interstate reciprocity and international recognition for professional trained accredited architects.

The Architects Board of South Australia is one of the nominating bodies of the Architects Accreditation Council of Australia (AACA), the national body created by State and Territory Architects Registration Boards to deal with qualifications required, mutual recognition and regulatory issues which require a national approach. The AACA plays a major role in maintaining uniformity of registration standards between each autonomous State and Territory authority.

State and Territory requirements for architects are uniform throughout Australia and registration in one state via the mutual recognition process is qualification for registration in another.

The AACA has produced an endorsed Legislative Guidelines for a National Model Act for the registration of architects, these guidelines have been favourably reviewed by the Trade Practices Commission.

Deregulation of the title "architect" in South Australia would preclude architects in this state from representation on a national body, thereby denying reciprocal registration to South Australian architects and perhaps more seriously isolating the State and its Schools of Architecture from national accreditation and recognition.

The international consequences for South Australian architects would be equally serious. Without the recognition of professional training by registration which would be accorded to other Australian architects, South Australian architects would be severely disadvantaged by being unable to compete for overseas contracts.

A critical aspect of international recognition arises from the recently signed Trans Tasman Mutual Recognition Agreement. This document pre-supposes registration or licencing processes existing in both countries. Without it the architects of South Australia could not be admitted to practice in New Zealand and vice versa.

### **OTHER BENEFITS**

The economic benefits and contribution to the South Australian economy by way of students who attend the Schools of Architecture at the Universities and then obtain registration via the Architectural Practice Examination are tangible. The registration process is important to overseas students and the economic benefits would be lost should South Australia cease to register architects.

Overseas students would select an undergraduate course based upon its accreditation. If registration was not available the economic benefit from overseas students would be diminished.

### **PROFESSIONAL INDEMNITY INSURANCE**

The Board notes the Architects Review Panel has not addressed the issue of Professional Indemnity Insurance. The matter has been considered by AACA and is included in the Legislative Guidelines.

The Board supports the concept of compulsory professional indemnity insurance for all registered architects as being strongly in the public interest and recommends the Review Panel consider the issue.

## CONCLUSION

The Board of Architects in South Australia from long experience in administering the Architects Act and as the interface with the public is convinced legislative constraints are necessary. However the Board supports the revision of the legislative provisions of the current Act, particularly in relation to the issues relating to ownership of architectural practices, advertising of architectural services, the structure of the Board, Professional Indemnity Insurance and disciplinary procedures. Changes to these areas would more effectively serve the public benefit and address the anti-competitive aspects of current legislation.

The Board is firmly of the view that the registration costs of the current legislation do not impact upon the public benefit, as they are met solely by the registration fees payable by registered architects at a level which is not considered a threat to competition.

The Board does not believe the restrictions, which would remain, are such that they could be achieved by different means. The consequences of repealing the existing legislation in the national and international context would be to the significant detriment of the South Australian economy.

**THE BOARD NOW WISHES TO ADDRESS EACH OF THE INDIVIDUAL QUESTIONS RAISED IN THE CONSULTATION DRAFT.**

What evidence is there that statutory regulation of the architectural profession in South Australia is a pre requisite to South Australian architects securing work overseas?

The Commonwealth Government recognises the importance of regulation of the profession in the International environment by introduction of the Trans Tasman Mutual Recognition Agreement which now facilitates mutual recognition of professional registration between New Zealand and the Australian States.

For architects to obtain work at least in Singapore and Malaysia it is obligatory to be able to produce evidence to the regulatory authorities that the architect is registered in Australia.

In addition the Commonwealth Government is supporting a regional conference to be held next year under the auspices of AACA. This conference will solely address registration, recognition, educational qualifications and other issues of the ASEAN region.

There are numerous countries which have similar registration requirements as Australia and without the recognition of these mutual procedures Australian registered architects would find it impossible to obtain work in those countries.

Do the public benefits associated with having a statutory requirement that architects must be registered outweigh the costs of this restriction on practising as an architect?

The Board considers the public benefits significantly outweigh the costs, for the following reasons:-

- There are no direct costs to the community as a result of this process. No government funds are required to administer the Act. Regulation is self funded and the level of fees payable by registered architects are considered nominal.
- The increasing sophistication of all consumers leads to increasing use of submissions for architectural services, a significant component of which relates to fees. In addition the natural process of supply and demand will ensure that should the perception or reality be that there is a significant shortage of expertise in a given market the demand for services will ensure over time the market supplies that need.

## OWNERSHIP

Are there public benefits which justify the restriction upon the purpose, ownership or control of an architectural firm?

The Board considers the provisions of the current Section 32A of the Act may restrict competition.

- The Board recognises the current situation may restrict registered architects from forming associations with other professionals which may restrict their ability to compete in certain markets.
- The Board considers the most appropriate alternative to the current Act is to modify the existing Act and by-laws such that of at least half of the owners/directors of a corporate entity which describes itself as providing architectural services are registered architects. This stance is supported by the AACA Legislative Guidelines.
- The critical issue is that all architectural work should be carried out under the supervision of a registered architect.

## DEREGISTRATION

The Board considers the relevant section of the Act relating to deregistration could be altered with enhanced public benefit by considering the following changes:-

- The reference in Section 24(1)(e) could be expanded to read – “Conviction for an indictable offence which affects the individuals competency to practise as an architect”. This would then preclude the possible adverse consequences which may arise from an individual being convicted for an indictable offence which has no relevance to the individuals architectural competence.
- Amending the registration procedures to require a statement from applicants that they have not been convicted of an indictable offence which has relevance to their ability to practise architecture.

The Board considers the Sections of the Act relating to deregistration of companies to be adequate, as it is only where the offence in the opinion of the Board is that the company is unfit to practise as a registered architect that the company be deregistered – not for an offence which has no relationship with the practice of architecture.

The Board considers the public benefit could be seemed to be more adequately protected if the Act gave power to the Board to consider deregistering as individuals any person who was a director of a company which was deregistered by the Board.

## PUBLIC BENEFIT OF REGISTERED ARCHITECTS

The Board recognises that whilst architects provide services in competition with unregistered non architects the level of education, training and experience of registered architects is a level significantly higher than the other providers of services.

This training ensures that when dealing with a registered architect the public receives not only technical advice but by virtue of the wide academic and practical training they are assured of the professions wider community obligations in terms of concepts, ideas, imagination and innovation which together create an enduring aesthetic environment which will not only impact upon the client but the public as part of the physical fabric of the built environment.

The conceptual stage is then translated by way of technical expertise, experience and specialised knowledge into documentation which will result in a practical, safe, functional, healthy, environmentally sound building which will impact upon the public generally as well as the users and owners of the building.

Architectural education places considerable emphasis on social responsibility and community values, which obviously impact upon the general public.

The Board believes there is a fundamental difference between training as a technician, requiring possibly only two years tertiary education and qualifying as a professional architect which requires a minimum of seven years education and training.

What are the risks associated with a person claiming to be an architect when they are not registered under the Architects Act?

Building projects involve significant health and safety issues which a registered architect is by training competent to address.

Consumers and the public can expect a high degree of expertise when dealing with an architect registered under current legislation. This recognition encompasses more than strict adherence to the various legislative provisions of Development Acts etc, but recognises the contribution the education of architects has on the wider environment, visual and public amenity aspects of architecture and consumer protection through the professional administration of contracts. It is these wider considerations which the Board believes is of public benefit. These benefits would be lost if the title architect was not protected by statute.

Is the term "architect" a term of art which should be preserved through statutory provisions which reserve the use of this word to persons with qualifications specified by statute?

The Board strongly supports the continuance of legislative support for the use of the title architect, for the reasons contained in this submission. The alternative of self regulation by the profession does not address the issue of conflict of interest whereby the profession could be seen to be acting on behalf of its members not protecting the public interest.



Can the public benefits associated with reserving the title "architect" be achieved through the architectural professions promoting itself and the services it provides?

The current Act exists to protect the public not promote the profession. The only other alternative would be for the Royal Australian Institute of Architects (RAIA) to promote the use of the word architect. The significant difference is that the RAIA is a professional body representing its members interests not the public interest. The Board believes only approx. 50% of registered architects in South Australia are members of the RAIA.

The Board believes the status quo should remain.

The RAIA also supports the continuation of the Board, retention of the title architect and the current legislation.

Are there other alternatives to prescribing title reservation in a statute which ensure that consumers are aware of the distinction between architects and non-architects?

The Board does not believe there is any other appropriate method or alternative to the current legislative approach. The risks associated with working with an architectural draftsman relate primarily to the differences in the level of education, training and experience between a draftsman and an architect. A draftsman requires possibly only two years technical training, to become a registered architect requires five years tertiary education and a minimum two years practical experience culminating in an architectural practice examination. The UIA (International Union of Architects) has set down a list of skills and abilities which it recommends as a Minimum International Standard. This list is referred to in the preamble to this submission.

It should be noted there are 44 member countries of the International Union of Architects and these members comply with the Standard.

Are there risks associated with a person working as an architectural draftsman without the supervision of an architect? What public benefit justifies restricting the manner and style of architectural drafting practice?

The Board believes the standard of education of architects is of such a high level in comparison with a draftsman that the public could be significantly misled by the use of the word architectural draftsman other than in the context of the current Act where the architectural draftsman is employed by a registered architect.

Are there public benefits achieved by limiting the form and amount of remuneration received by architects, and restricting the capacity of architects to undertake unremunerated work?

The Board's concern is that professional services of the highest quality be provided in the public benefit irrespective of the basis of remuneration.

The Board does not believe there are any public benefits achieved by limiting the form and amount of remuneration received by architects and believes by-law 38,2 could be excluded from the Code of Professional Conduct, and be replaced with a clause that architects shall disclose to clients the full details of remuneration payable in respect of the commission from whatever source.

Are there public benefits associated with limiting the capacity of architects to advertise their services, which is not achieved by consumer protection legislation such as the Fair Trading Act 1987(SA) and the Trade Practices Act 1974 (C/wlth)?

The Board agrees that the provisions of the Fair Trading Act and The Trade Practices Act are sufficient to protect the public in relation to advertising by registered architects and that by-law 38.7 could be repealed.

Are there any public benefits achieved by restricting the ability of architectural firms practising in partnership?

This question is referred to earlier and the Board considers it appropriate to repeal Section 45(b) of the Act.

Do the public benefits of this restriction outweigh the costs?

Section 45d of the Act was originally included to ensure that those architects who chose to practice as individuals or in partnership of individuals were not disadvantaged by competing against those persons whose choose to incorporate and avoid limited liability by this means. This section is obviously in the public interest as it affords the consumer greater recourse in the event of a claim.

Should consumer representation be included on the Board?

The Boards sees merit in consumer representation on the Board. It would be appropriate that those appointees have some background in the building/contracting industry so as to have the ability to provide an informed viewpoint in deliberating issues before the Board.

Whilst recognising the existing structure of the Board it is considered that no more than two consumer/public/non architect members should be appointed.

In addition the Board believes the composition of the Board should include one academic architect appointed by the School of Architecture in rotation.

The above composition of the Board would then provide better balance and would be in accord with the AACA Legislative Guidelines.

Would the separation of the investigative and disciplinary functions of the Board more fully ensure natural justice to architects against whom allegations of professional misconduct are made?

The Board sees merit in separating the investigation and disciplinary function of the Board.

The circumstances giving rise to problems due to poor and inadequate building design and construction and contract administration, particularly in the residential sector of the market, are often extremely complex and require, in addition to the usual legal or quasi-legal participants in the conduct of a hearing, experts in the architectural design and building construction process. For this reason the Board suggests that a specialised tribunal would be justified, on which at least two architects, known for their skills, expertise and objectivity, would serve, in addition to a legal practitioner and a lay person.

(reports\FEE.DOC)

**REGISTRATION BOARD FEES, February 1999**

PRESCRIBED FEES	ACT \$	NSW \$	NT \$	QLD \$	SA \$	TAS \$	VIC \$	WA \$
INITIAL REGISTRATION FEE								
• Natural persons		200	50	187	70	50	85	10
• Partnerships		100	100				110	
• Companies		100	100	170	220		110	200
REGISTRATION CERTIFICATE FEE		Free	30	42		10		50}
CERTIFICATE OF REGISTRATION FEE	188							
CERTIFICATE REPLACEMENT FEE		20		42	50		50	
ANNUAL ROLL FEE (Annual subscription)								
• Natural Persons		100	50	60	90	45	90	85
• Partnerships			150				90	50
• Companies			150	120	150		90	170
• Companies, up to 2 directors (SA)								
• Companies, more than 2 directors (SA)					200			
• Retired Architect (VIC)							26	
ANNUAL PRACTISING CERTIFICATE FEE	110	Free						
VARIATION IN TERMS OF PARTNERSHIP			25					
RESTORATION OF REGISTRATION FEE		200						
• Retired Architect (VIC)		(100 + roll fee)		85 + roll fee	50		40 + roll fee 15 + roll fee	roll fee
PRESCRIBED EXAMINATIONS				QLD			VIC	
				51+44 (part 1)			Each subject part 1: \$157 each, except Design & Planning which is \$630	
				51+44 (part 2)			Each subject part 2: \$183 each	