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**Response to the Draft Report of the Productivity Commission
on the review of Legislation Regulating the Architectural Profession.**

Adelaide 8 June 2000

Introduction

1. This response is based on the experience gained by me as a draftsman, designer, builder and project manager in England, Italy and Australia prior to entering University in Adelaide and subsequently registering as an architect, as well as my experience as an architect since then.
2. This experience includes working as a sole practitioner on residential work, as a project architect on major publicly and privately funded works and as project manager on major commercial developments and civic infrastructure works. In this capacity I have project managed, superintended and led design teams for some \$500 million worth of capital works in the past ten years in Adelaide.
3. I am currently engaged as the Capital Works Co-ordinator for the City of Adelaide. I chair the Corporation's Capital Works Committee. I am an elected member of the Architects Board of South Australia and an accredited examiner for the Architectural Practice Exam, success in which leads to registration as an architect. However while I fully support the submissions of the Architects Board of South Australia and the Architects Accreditation Council of Australia I feel it may be relevant to express my own observations and opinions as someone who entered architecture after other careers.
4. In brief I have formed my opinions based on experience as a consumer and as a provider of professional and non-professional services in the business of design and construction.

Architects Contract Management Role

5. It became obvious to me at a fairly early stage in my experience in building work that the architect not only required a broad range of technical knowledge enabling them to co-ordinate the input of the various engineering disciplines and other consultants but who also was able to be contractually established as an arbiter and certifier of work between the client and the builder. This contracted arbitral role during the construction process requires sound contract law knowledge and sensitivity and forms an important part of an architects education. Without it they cannot pass the Architectural Practice Exam.

Statutory Accreditation and Australian Universities

6. To emphasise the importance of this issue the accreditation of the University of Adelaide's bachelor of architecture degree as a degree acceptable for sitting the Architectural Practice Exam-was- withdrawn by the Architects Board of South Australia in the mid 1980's for one year. This was due to the University not satisfying the Boards requirements for professional practice education. This was a unique event, the accreditation system was tested and the University amended its course to the satisfaction of the Board. The reason this matter was resolved was not only the pressure from those graduates who found they had to undertake additional post graduate studies prior to sitting the Architectural Practice exam, but also due to the fact that overseas students and registration bodies require these professional degree courses to be recognised by an appropriate statutory authority. Without this recognition by a statutory authority it is unlikely that Australian Universities would maintain their existing foreign income and local employment through being able to offer these statutory accredited courses. The professional bachelor of architecture degree courses are the only courses which include professional practice with a major content of contract administration and contract law as a compulsory element. Engineering courses do not and building courses currently concentrate on direct client/builder contracts with no intermediate superintendent and certifying role.

7. The assumption by the Productivity Commission that self-regulation could readily replace this statutory accreditation flies in the face of accepted practice throughout the world and would be used to considerable advantage by overseas universities. Deregulation would be anti-competitive for the Universities competing in a world market. It would reduce income and job opportunities for academics and practitioners and would likely lead to local students considering studies overseas.

Cost benefits of existing legislation

8. The Productivity Commission in its report's Terms of Reference, Scope of inquiry, states that " The *Commission is to have regard to the following matters, where relevant:*

'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, including non-legislative approaches.'

9. Currently the only legislation which could be said to restrict competition is the restriction of use of the title architect to those qualified practitioners who are registered with state boards. The practice of building design, unlike every other skilled input into the building industry, is unlicensed. The consumer has a completely free choice. In most Australian States and territories the cost of administering the Architects Acts is borne entirely by the architectural profession. In South Australia the current registration cost for an architect is \$95.00 annually which is unlikely to impact on the professional fee to the consumer. A non legislated alternative would have to be considerably more expensive due to the extensive industry and consumer re-education process which would have to be undertaken.

10. In South Australia, I am aware of only two areas where registered architects may be said to have an advantage over non registered practitioners:

1. Regulations under the South Australian Liquor Licensing Act in regards to plans submitted with Applications require that:

Plans to accompany applications

10. (1) For the purposes of section 51(1)(b) of the Act---

e) the plans must, if the licensing authority so requires, be certified by a registered architect or a registered surveyor.

In this case repealing the Architects Act would be anti-competitive, as this work would be restricted to registered surveyors.

2. The South Australian Builders Licensing Act deems registered architects to be category I building work supervisors. That is they are deemed to hold a licence to supervise any type of building work.

In this case repealing the Architects Act would not increase competition or reduce costs and it is unlikely that the Builders Licensing Act would be amended to transfer the current deeming provision to a non-statutory body. In other words the only effect would be to increase costs and possibly confusion as some architects might feel obliged to apply and pay for supervision licenses.

In neither of these cases would the consumer or competing professionals benefit.

The domestic and small commercial market

The commission has noted that at the domestic and small commercial end of the design market that a large amount of work is done by practitioners other than architects. In a non restricted market place this would seem to be commercially inevitable where for small jobs the skills of an architect may be perceived by the client as not being required. In addition, until relatively recently architects in South Australia were prohibited from advertising while their non registered competition faced no such restriction and in many cases persistently used the title 'architect's 'architectural designer'. Because architects, through training and experience, are far more likely to know the true costs of preparing a building design and because they frequently are contracted to superintend this work their fees will always tend to be higher than those of a draftsman simply preparing a plan for a builder. The architect's professional role requires that his or her documentation can be safely used for tendering and contractual purposes and to be prepared sufficiently carefully to mitigate against contractual dispute and misunderstandings. This is considerably more involved than being simply 'a good designer' and the fact that some non registered practitioners believe that they provide equivalent

service is not an argument for repealing the Architects Act and removing an effective method of identification for qualified and registered practitioners.

Architects role diminished in the modern environment?

12. The Commission appears to argue that with the large number of associated professionals whose work overlaps that of an architect that the architect's role is somehow diminished and that protecting the title serves no useful purpose. I believe the commission has allowed itself to be misled and swayed by arguments, which have more, to do with occasional professional jealousy than demonstrated reality.

13. The fact is that the skills of the building industry are generally fragmented into specialist areas including construction and project management. There are few genuine master builders these days working on major complex projects. That role has now largely passed to the master designer, the architect who creates and leads the design team, which includes amongst others all of the engineer, survey and costing disciplines. I have witnessed on a number of occasions major multimillion dollars industrial developments, frequently government funded, which have commenced under an engineer or unqualified project manager lead role and where a firm of architects brought in for minor ancillary works has assumed a larger and larger role in managing the total project.

14. My own experience has been that the architect is generally held in high regard by major developers, builders, institutions and government departments, not only for their design team leadership roles but also for their 'on the job' contact management and superintendents roles. This regard is coupled with strong expectations of a high standard of technical and professional performance.

15. Of course there is an overlap of skills with associated professions but the architects extensive training and broadly based professional knowledge is of considerable importance to the constructions industry. The current professional status of the architect coupled with their contractual arbitral role helps the construction industry function without more frequent resort to litigation and dispute resolution via the courts.

Modern methods of contracting

16. The commission appears to have given credence to the argument that some modern contractual arrangements do away with the architects contract management role.

- Design and Construct contracts offer a supposedly cheaper method of project delivery because the risk is transferred heavily to the client who contractually frequently loses any control and gives up the normal certifying process. Knowledgeable clients who enter into these contracts still engage architects and associated professionals to minimise the risk of these contracts.
- Build, own, operate and transfer or BOOT schemes still have to be designed and constructed properly to be commercially viable. Although frequently built down to a price which produces somewhat crude finishes. Examples in Adelaide clearly indicate that you get what you pay for.

17. For the client, engaging an architect to design and superintend a project from start to finish provides a valuable level of control and risk management.

18. The Commission has noted that major developers are likely to have in-house architectural teams. My own experience with major developers, institutions and government is that there is a recognition that architects provide the required range of skills to manage and minimise risk for all areas of construction work including civil engineering works.

Public benefit of identifying the qualified practitioner

19. The Productivity Commission in its report's Terms of Reference, Scope of inquiry, states that "*The Commission is to have regard to the following matters, where relevant:*

"quality of the built environment and government legislation and policies relating to ecologically sustainable development, social welfare and equity considerations, including community service obligations; government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity; economic and regional development, including employment and investment growth; the interests of consumers generally or of a class of consumers; the competitiveness of Australian business; and the efficient allocation of resources;

In every one of these items the commissions has failed to show any benefit of repealing the Architects Acts. Indeed in every one of these items it would be bizar to suggest that the sub-professional could reasonably be expected to play a role so similar to the trained professional that the identification of the trained professional by a title understood and restricted in use by all of the countries with whom we routinely do business is not necessary.

20. Yet the commission has brushed the blindingly obvious aside and proposes to remove the single most effective means for the consumer of identifying the qualified professional.

21. The commission argues that the consumer is protected by the building approval process of the local authorities. This demonstrates the commission's lack of knowledge in this area. In particular local authorities do not have the resources to consider aspects such as energy efficiency or ecologically sustainable development. They frequently do not have the resources to consider flood or bushfire mitigation. They provide minimum review standards. The client, who choses the cheapest design service, by default, passes on the necessary cost of the review process to the community.

22. The production of inferior building stock, and Australian project homes are notoriously energy inefficient, results in ongoing costs to the owner and increased environmental damage and costs to the community. In almost every case where the cost to the consumer is decreased by poor design the cost to the community as a whole and the environment is increased.

23. The Commission's focus seems to be inward looking and considering only the initial bottom line expense of the consumer. Society, public welfare and safety and the environment has not genuinely been considered.

Conclusion

24. The Commission states that "Architects have unique skills and expertise to offer the community and it is in the community's interests that they market and use their skills as well as possible".

25. As previously noted the cost of registration for an architect in South Australia is \$95.00 a year or less than 25 cents a day, and the current registrations system operates at no cost to but at considerable benefit for the general community.

26. The protected title of architect provides an easily understood bench-mark of professional competence for the consumer in an otherwise almost totally deregulated market. Requiring architects to invent another more complex title to replace the existing, unambiguous, easily understood title of Architect in order to satisfy the current desire for deregulation in an already totally deregulated market can only increase costs, confuse consumers, invite misrepresentation and inevitably affect our overseas trade in education and consulting services.

27. I would ask the Commission to sincerely reconsider its position and recognise the genuine benefits to the community of not only retaining the existing Acts but moving towards a system of National Architectural registration.

Tom Maxwell
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