

STATE REVIEW  
OF THE  
*ARCHITECTS ACT 1921*

June 2001

Prepared by:

Legislation and Contract Support Branch  
Strategic Resource Management  
Department of Contract and Management Services

Level 7 Dumas House, 2 Havelock Street, West Perth WA 6005

# 1 EXECUTIVE SUMMARY

This State review of the *Architects Act 1921* commenced in December 1997 as a result of the need to conduct a review of legislation under the National Competition Policy (NCP) Competition Principles Agreement. The *Architects Act 1921* is the relevant Western Australian legislation for registration of architects.

Although focussed on the specific needs of the Competition Policies Agreement, the State review of the *Architects Act* must also allow for other policies and developments and consider the future regulation of architects in the broadest possible context to deliver the best possible outcome for Western Australia.

This report takes into account a number of inputs and issues that have arisen during the course of this review, including reviews of other legislation regulating the building industry in Western Australia, earlier proposals for reform of the Architects Act, proposals to introduce a new *Building Act* to control building standards, and two National Competition Policy reviews of legislation regulating the architectural profession, one at a national level conducted by the Productivity Commission and one focussed on the Architects Act WA conducted by ERM Mitchell McCotter (ERM).

The Productivity Commission and ERM reviews of legislation regulating architects only considered in detail one facet of what is an established and varied profession. They looked at price competition for building design and contract management services and the effect of reserving the title “architect” for providers of professional level services in that market.

The terms of reference and required methodology for NCP legislation reviews limit their scope to essentially economic factors. It is also necessary to consider the public interest in respect of other factors—most notably the impending reform of general building industry legislation.

This State review considers the *Architects Act 1921* of Western Australia. While its outcome must be recommendations that are in the best interests of Western Australians, the review cannot ignore national and global interests and outcomes.

This review finds:

### ***Legislated Registration***

NCP legislation reviews have not been able to determine by economic analysis, within the limits of accuracy of the evidence available, whether there is a net public benefit or a net public cost in retaining a registration system for architects based on the current *Architects Act*.

There is no evidence to show a benefit from abandoning legislated registration. Conversely there are dangers if Western Australia moves precipitately ahead of the rest of Australia, and if Australia moves ahead of the rest of the world in abandoning a world-standard registration system.

The national and international status of Western Australian architects should be supported on both economic grounds to ensure international competitiveness and on civic grounds to demonstrate the cultural importance of architecture and the built environment to Western Australia. Overall there is a compelling case to maintain legislated registration of architects in Western Australia.

### ***Administrative Improvements***

Amendments to the Act proposed by the Architects Board, and AACA, were held over pending the NCP legislation review process. Both the NCP reviews identified these administrative improvements and concurred their implementation would address most of the detailed anti-competitive issues raised in the economic reviews.

These administrative reforms are sound, align with other professional registration system proposals, will support future integrated building industry regulation initiatives and can be implemented immediately.

### ***Building Standards***

Current and pending changes to building industry legislation in Western Australia recognise the need to identify and to restrict certification of building standards to competent practitioners. This presents a strong argument for the continued and enhanced registration of architects and other building practitioners.

An effective registration system should reflect both the tiering of professional standards in building design and contract administration and the ongoing competence of practitioners to certify compliance with relevant provisions of the BCA.

There are sound grounds to retain and develop the current *Architects Act* to support the registration process required by the proposed *Building Act*.

### ***Protection of the Title “Architect”***

Restriction of title is a normal part of professional regulation and allows a consumer of professional services to know that a person using that title has a known level of professional skills. The term “architect” has always been used to describe a professional designer of buildings. There are no economic or logical grounds for debasing the label “architect” to include those who cannot meet the established professional level of skill and experience.

As long as the title “architect” remains protected, restrictions on use of derivatives, such as “architecture” and “architectural” are unnecessary and should be removed.

### ***Recommendations***

CAMS recommends the *Architects Act 1921* be retained and developed to meet current and future needs of the building industry in Western Australia and to address the following issues:

1. Composition of the Architects Board: Broaden representation including industry, educational, professional and consumer interests and align with current practice for regulatory Boards.
2. Registration of Firms and Corporations: Control of corporations and firms via Corporations Law. Remove restrictions on ownership or control, or on distribution of earnings. Only individuals, not firms or corporations to register. Work to be supervised by a registered architect. Provisions to be consistent with other professions.
3. General Administrative Amendments: Update other provisions generally in accordance with the ERM, Architects Board and AACA recommendations, including clarification of eligibility requirements, removal of restrictions on age, advertising, and use of derivatives.
4. Alignment with the New Building Act: Support intent and objectives of current building regulation reform—particularly the proposed Building Act. Allow for: integration into a unified registration system for building practitioners; ability to certify BCA compliance restricted to registered building practitioners with annual practice certificates; continuing professional education; liability reform via compulsory appropriate professional insurance, limited and proportional liability; and legislated registration of appropriate classes of building design practitioners.
5. Tiering of Practitioners: Tier registration of building design practitioners to certify compliance with the BCA. Registration as, and use of appropriate occupational description for draftsman, building designer, and architect, based on requisite skill and experience levels.
6. No Practice Restrictions: No restriction on preparation of building designs and submission for a building licence. Building licence issue dependent on certification of BCA compliance from appropriately registered building practitioners.
7. Protection of the Title “Architect”: Develop accurate labelling of practitioners to reflect relative education, skills and experience levels for professional, para and sub professional levels. Define professional title “architect” and restrict use to appropriately registered / qualified/experienced practitioners. Define occupational titles of “building designer” and “draftsman”.
8. Implementation: Recommendations 1 - 3 be implemented in the short term to address known difficulties with the Act and allow effective continuity in regulation of the profession. Recommendations 4 – 7 directly support the longer term goal of integrated regulation and can be implemented subsequent to further resolution of the overall regulatory framework.

# TABLE OF CONTENTS

<b>1.</b>	<b>EXECUTIVE SUMMARY</b>	<b>1</b>
<b>2.</b>	<b>OVERVIEW OF THE STATE REVIEW OF THE <i>ARCHITECTS ACT 1921</i></b>	<b>5</b>
2.1.	Background to the Review	5
2.2.	The Architectural Profession	6
<b>3.</b>	<b>INPUTS TO THE STATE REVIEW</b>	<b>8</b>
3.1.	Earlier Legislative Reform Initiatives	8
3.2.	Proposed Building Legislation	8
3.3.	The Productivity Commission Review	9
3.4.	The ERM Mitchell McCotter Review	13
<b>4.</b>	<b>REGULATION OF PROFESSIONS</b>	<b>16</b>
4.1.	Legislation Reviews of Professional Registration	16
4.2.	Defining the Profession	17
4.3.	Changing Views of Professional Conduct	18
<b>5.</b>	<b>BUILDING INDUSTRY REGULATION</b>	<b>22</b>
5.1.	Background	22
5.2.	Current Issues	23
5.3.	Proposal for Integrated Regulation and Protection	23
5.4.	Legislation Required	25
5.5.	Issue of Building Approvals	25
5.6.	Registration	27
<b>6.</b>	<b>PROTECTION OF THE TITLE “ARCHITECT”</b>	<b>30</b>
<b>7.</b>	<b>CONCLUSIONS</b>	<b>33</b>
7.1.	Legislated Registration	33
7.2.	Administrative Improvements	34
7.3.	Building Standards	35
7.4.	Protection of the Title “Architect”	36
<b>8.</b>	<b>RECOMMENDATIONS</b>	<b>37</b>
<b>9.</b>	<b>APPENDICES</b>	
9.1.	Appendix 1: ERM Mitchell McCotter NCP Review of the <i>Architects Act 1921</i>	39

## 2 OVERVIEW OF THE STATE REVIEW OF THE ARCHITECTS ACT 1921

### 2.1 BACKGROUND TO THE REVIEW

This State review of the *Architects Act 1921* commenced in December 1997 as a result of the need to conduct a review of legislation under the National Competition Policy (NCP) Competition Principles Agreement. The *Architects Act* was included in the list of Western Australian legislation that may restrict competition and may therefore require review under the Agreement.

The *Architects Act 1921* is the relevant Western Australian legislation for registration of architects. Administration of this Act is the responsibility of the Minister for Works and the Department of Contract and Management Services (CAMS). CAMS is the major user of architectural services on behalf of State Government agencies through its Asset Management Services Directorate. The Director of Asset Management Services, Dr Frank Pitman, is a Governor's appointee to the Architects Board. The review of the *Architects Act* was carried out independently of the Asset Management Services Directorate by the Legislation and Contract Support Branch that reports to the Minister through the Director, Strategic Resource Management.

An *ad hoc* Advisory Committee was established by the Minister for Works and comprised representatives of the Minister for Works' office, the Department of Contract and Management Services, the Architects Board of WA, the Property Council of Australia, the Royal Australian Institute of Architects and the Building Designers Association.

NCP reviews of legislation are required to follow a methodology set out by the National Competition Council. CAMS sought submissions from firms on the Treasury Panel for National Competition Policy reviews and contracted ERM Mitchell McCotter to undertake the economic analysis of the *Architects Act* and prepare a report that conformed to the Treasury guidelines. ERM Mitchell McCotter developed a discussion paper on *National Competition Policy Review of the Architects Act 1921* and submissions to the review were sought via public advertisement and via direct invitation to ten key organisations who provide broad representation of interests in relation to regulation of architects. A report had been completed to a first draft stage when proposals were put forward for a national review by the Productivity Commission. Although Western Australia did not participate formally in the national review<sup>1</sup>, further work on the ERM Mitchell McCotter review was suspended pending completion of the national review. Subsequent to the release of the Productivity Commission Inquiry Report<sup>2</sup>, the formal NCP<sup>3</sup> legislation review by ERM Mitchell McCotter has now been completed and is attached as Appendix 1 of this State review.

This report on the *Architects Act 1921* takes into account a number of inputs and issues that have arisen during the course of the State review. Although focussed on the specific needs of the Competition Policies Agreement, the review of the *Architects Act* in Western Australia must also allow for other policies and developments. Architects are only one of a number of

---

<sup>1</sup> The Productivity Commission Inquiry Report is incorrect in suggesting that Western Australia was a party to the national review.

<sup>2</sup> Productivity Commission *Review of Legislation Regulating the Architectural Profession* Melbourne 4 August 2000

<sup>3</sup> ERM Mitchell McCotter *National Competition Policy Review of The Architects Act 1921 and Subordinate Legislation* Perth March 2001

professions that are regulated by statute, and any developments in regulation of architects should be generally consistent with other professions. As a key contributor to the building and construction industry, architects must work compatibly with other professions and trades in the industry. There are currently significant reviews of legislation regulating the building industry in Western Australia and proposals to introduce a new *Building Act* to control building standards. This State review must build on the two NCP legislation reviews to consider the future regulation of architects in the broadest possible context to deliver the best possible outcome for Western Australia.

The key issues in reviewing the *Architects Act* are:

1. Does architecture as a profession warrant the same status and protection given by society to other professions?
2. Is there a set of professional standards and skills that the community expects of its architects, and is registration an appropriate way of recognising people having those skills and holding to those standards?
3. Should the title “architect” be restricted to those who have demonstrated professional level standards and skills?

## 2.2 THE ARCHITECTURAL PROFESSION

Architecture is one of the oldest professions, but has been subject to considerable change as a result of technical and social developments over the last two hundred years. Architects have never had a monopoly over building design and construction. The Productivity Commission Inquiry Report<sup>4</sup> sets out the available statistics for architectural practice within Australia and the market share of architects in building design. Domestic and rural buildings have usually been designed and constructed by local builders or owners. Historically architects are more usually associated with substantial residences and public buildings where the technical complexity and financial risk involved require high skills and considerable experience.

As a public art, architecture is closely connected with a society’s culture and self-expression. This is particularly the case with public buildings and substantial developments that affect the built environment. Individual architects can be as well known and important to a culture as an artist or an author. Our society expects members of the profession of architecture to have the ability to design and deliver quality buildings that enhance the environment and reflect our society’s aspirations.

The designer of a complex building must bring together in functional and aesthetic harmony a very diverse range of accommodation requirements, structural stability, building services, building standards and public health measures. In supervising construction a contract administrator must understand a wide variety of trades and legal and commercial principles. The skills of an architect are therefore of great importance to building owners who finance and use the resulting buildings and to the public who must not only safely use them, but live with their effect on the environment in which they stand.

Two hundred years ago an architect could hope to master all the technical skills required to design and construct the most complex buildings. The profession attracted people with mathematical and scientific interests and architects made substantial and lively contributions to the intellectual as well as the physical development of their societies. The rapid technical developments since made possible by science and the industrial revolution have driven the need for specialisation in building technology. Today architects are supported by teams of specialist architects, engineers and technicians and the traditional technical role of the profession in building design has been obscured.

---

<sup>4</sup> Op. Cit. pp 29–59



The involvement of architects in small scale domestic and commercial buildings is still limited<sup>5</sup>. Much of the design work in this area is handled by building designers who for various reasons are not eligible for registration as architects, or who have chosen not to seek registration. There is vigorous competition between registered architects and independent building designers in the markets for one-off residential and light commercial buildings. Both groups have access to technical support from specialist consultants and can rely on some degree of checking through local authority building licensing to ensure basic building standards are met. It is in this area that the debate on registration of architects is most commonly focussed.

The majority of single residential building in Western Australia is handled directly by building companies with in-house architects or designers and often using standard designs. Construction contracts in this area do not normally allow for an independent or professionally skilled contract administrator and disputes between the owner and the builder are usually referred to the Builders Registration Board for resolution. This segment of the market has developed into an industry of its own, with the use of display villages and salespeople acting as the interface with consumers, rather than the designer or architect. There are few issues relating to registration of architects that impact on the “project home” industry.

The market segment in which architects remain dominant is in the design of substantial commercial and public buildings. The risk to public safety, the technical issues to be resolved and the effect on the general built environment require professional skills of a high order. Public authorities and private sector developers seek certainty of outcome for their building projects and the assurance that registration of architects gives is generally valued in this sector.

In Australia the architect is often seen as primarily an “artist” concerned with the aesthetic nature of “design” rather than as a technologist ensuring the function and safety of buildings. In European countries the architect is seen as much a building technologist as a design “artist”. There is no doubt that a well designed building should reflect something more than simply function, but the primary professional role of the architect remains that of master coordinator of all the different requirements of an effective and safe building. To do so requires technical and managerial skills of a high order.

The *Architects Act* and the Architects Board set up under that Act exist to ensure that registered architects have the appropriate professional level of skill and experience in building design and construction. This is done by qualifying educational courses and by examining candidates for registration. In reviewing the Act to determine if the public benefit in registration outweighs any restraint on useful competition the focus is on the essential technical skills of the architect and not the artistic flair that captures the imagination but not the essence of the profession.

---

<sup>5</sup> Ibid. p 48

## 3 INPUTS TO THE STATE REVIEW

### 3.1 EARLIER LEGISLATIVE REFORM INITIATIVES

The *Architects Act* was originally enacted in Western Australia in 1921. It reflects not only the legislative drafting style of the time, but also contemporary methods of regulating professions. The Act has been amended to keep it in line with community needs, but the last substantial change was in 1969. Since 1995 the Architects Board has recommended a number of changes to the Act to deal with archaic provisions and developing thought on competition and professional registration. The Board has also supported more general recommendations for updating of legislation promoted by the Architects Accreditation Council of Australia (AACA).

The State Government did not proceed with these recommendations because of the impending requirement to carry out a formal NCP legislation review. The ERM Mitchell McCotter review, and to some extent the national review carried out by the Productivity Commission, have also identified changes already recommended by the Board.

To comply with the strict requirements of the Competition Principles Agreement the formal economic analysis has been carried out on the Act as it is, rather than how it might have been had the proposed amendments not been suspended. This detracts from the usefulness of some of the analysis and tends to divert attention to known problems rather than fundamental issues. This is discussed in more detail in sections dealing with the Productivity Commission Inquiry Report and the ERM Mitchell McCotter report.

In considering the outcomes of the Productivity Commission and ERM Mitchell McCotter reports this review assumes that valid comparison of legislated registration with alternatives must be against a “best practice” *Architects Act* that embodies these obvious and widely supported amendments.

### 3.2 PROPOSED BUILDING LEGISLATION

In March 2000 State Cabinet approved the drafting of a new *Building Act* to regulate building standards in Western Australia and to reform legal liability for design and construction defects. In relation to registration of architects, the key provisions of the new legislation are:

1. Appropriately qualified and registered “approving building surveyors” will certify that a proposed building meets the standards set out by the Building Code of Australia (BCA);
2. Approving building surveyors can rely on certificates of compliance issued by registered building practitioners; and
3. A regime of limited, proportional liability will apply to appropriately registered and insured building practitioners.

The liability reform provisions will require comprehensive registration of building practitioners that is best placed outside of the *Building Act*, using existing legislation where possible. At this stage of the drafting process it is not clear if the approving building surveyor (with the assistance of appropriately registered specialist consultants) will be required to independently check all aspects of the building design before deciding to issue a building licence, or whether appropriately registered building practitioners can certify that their designs meet the relevant standards and the approving building surveyor can rely on this before issuing a building licence.

The choice of checking and certification philosophy will have significant implications for the building design and construction industry. If all designs are to be independently checked it

will remain open to any person to prepare documentation and submit it for approval. If, however, a regime of self-certification is adopted then only appropriately registered people will be able to prepare and certify building designs. This could effectively move architects registration from simply a protection of name to a protection of practice, with significant effects on builders and building designers.

The *Builders Registration Act* as presently enacted allows a builder with only experience in constructing single dwellings to construct multi-storey buildings and complex constructions such as hospitals. The legislation review of the Act has suggested that builders should be registered in one or more categories depending on the class of building as set out in the *Building Code of Australia*. Similarly the States have agreed to class building surveyors in two tiers based on size of building. It is reasonable that a similar tiered registration system should be applied to registered building designers/architects.

Reform and alignment of building standards and consumer protection legislation could lead to a registration regime where:

1. Buildings must be designed and certified by a building practitioner registered for the appropriate class of building; and,
2. Buildings must be constructed by a builder registered for the appropriate class of building.

In such a regime the *Architects Act* could be developed to register all building designers for their appropriate class of building and to require the continuing professional education and insurance required to support liability reform.

Some States have legislation to enhance security of payment in the building and construction industry<sup>6</sup>. It is expected that Western Australia will also enact security of payment legislation, although the form of this is not yet determined. Some security of payment strategies require registration of building practitioners and compulsory insurance cover. This is also a key element of the new *Building Act* and may also be incorporated into the revised *Builders Registration Act*. It is likely that some ongoing registration of architects will be required; either as part of a general industry scheme or as a professional scheme aligned to general industry practice.

### 3.3 THE PRODUCTIVITY COMMISSION REVIEW

The *Review of Legislation Regulating the Architectural Profession* published by the Productivity Commission as its Inquiry Report Number 13 in August 2000 was carried out at the request of the Commonwealth Government to assist State and Territory Governments to meet their own review obligations and to help achieve greater consistency in any future regulation of the architectural profession in Australia.

The Productivity Commission Inquiry Report has considered in general terms the common provisions in State legislation rather than the detailed provisions of each State Act. Its usefulness in respect of this State review is that it promoted debate on some of the key issues and suggested preferred findings, rather than its relevance to the specific provisions of the Western Australian *Architects Act*.

The usefulness of the Productivity Commission Inquiry Report as a contribution to the State review is seriously reduced by a number of factors.

---

<sup>6</sup> New South Wales: *Building and Construction Industry Security of Payment Act*, Queensland: *Queensland Building Services Authority Amendment Act*.

### ***Lack of Hard Evidence***

The first step required under the Competition Principles Agreement is to determine whether there is any evidence that the legislation has the effect of restricting competition. If there is no convincing evidence, the legislation does not need to be reviewed further. The Productivity Commission notes that there is limited data available on which to base an assessment of the Architects Act<sup>7</sup>. Much of the report relies on anecdotal rather than hard statistical evidence. The Productivity Commission has not been able to find either significant restriction of competition or significant costs<sup>8</sup> within the limits of accuracy of the information available to it.

### ***Lack of Intellectual Rigour***

The recommendations of the Review are rarely supported by the analysis of available data. The paucity of hard evidence and the inconclusiveness of the information available would normally refrain an impartial and rigorous reviewer from making firm recommendations. The Commission has taken a more dangerous approach. In the absence of evidence it has turned to what might be called economic articles of faith and assumed that any restriction (real or imagined) on competition must give rise to costs.

In the key area of restrictions on the use of the title “architect” the Commission argues, rather obscurely, that costs are incurred in restricting the title to those who have demonstrated competencies at the professional level because consumers may have to search harder for alternative providers of building design services<sup>9</sup>. Yet the Commission goes on to say that:

*“Consumers who use architectural services repeatedly, such as building and construction firms, are likely to be well aware of available alternatives. Those who only require these services infrequently, such as consumers in the single dwelling market, may not be as familiar with the range of providers available. For these groups, there is a greater possibility that title restrictions will inhibit competition.”<sup>10</sup>*

The Commission provides no evidence that title restrictions have restricted competition, but conversely, argues that title restrictions have not restricted competition in this part of the market.<sup>11</sup> Despite this the Commission makes a finding that:

*“Because of the absence of restrictions on practice, the anti-competitive effects of title restrictions in the current Architects Acts (under review) do not appear to be large. Nonetheless, these effects impose costs on some consumers.”<sup>12</sup>*

This conceptual leap from limited, and on balance contrary evidence, to a bald statement that “*these effects impose costs*” demonstrates a lack of academic and intellectual rigour. Many of the findings and recommendations made by the Productivity Commission are rendered dubious by the failure to support recommendations with evidence, or in extreme cases, the making of recommendations in the face of the evidence.

### ***Superficial Comparison of Alternatives***

Most of the potential costs or restrictions identified by the Productivity Commission are administrative issues easily addressed by amendment to the legislation. The Commission

---

<sup>7</sup> Op. Cit. p 29

<sup>8</sup> Ibid. p150

<sup>9</sup> Ibid. p116

<sup>10</sup> Ibid. p118

<sup>11</sup> Ibid. pp48–49, p118

<sup>12</sup> Ibid. p129

notes in its consideration of the Architects Accreditation Council of Australia (AACA) *National Legislative Guidelines* that:

*“These changes effectively would remove most, if not all of the anti-competitive costs of title and derivative restrictions under current Architects Acts. They also would improve the consumer focus and credibility of the statutory certification system.”*<sup>13</sup>

In identifying its preferred approach the Commission again notes that:

*“Several amendments.....could improve current Architects Acts by reducing impediments to competition and promoting transparency and accountability of Architects Boards.*

Against these improvements to current legislation which have been well publicised and are widely supported, the Commission proposes a system of voluntary self-regulation.<sup>14</sup> There is, however, no comparative assessment of the costs or effectiveness of self-regulation compared with a “best-practice” revision of the *Architects Act*. There is no question that self-regulation is possible. What is missing is any analysis or argument to say that it is better. The Commission seems to have fallen back on an article of faith that legislated regulation is bad, unless proven to be good, and that non-legislated regulation is good without any proof at all.

### ***Confusion About Competition***

Registration under the *Architects Act* effectively does two things:

1. It identifies a group of people who have demonstrated a professional level of skill and experience; and,
2. It reserves a particular label (“architect”) to identify these people.

In examining effects on competition, the Commission is not always clear whether it considers competition to consist of:

1. Allowing any person, regardless of skills and experience, to use the label traditionally reserved for people with professional skills and experience. The Commission considers that if everyone used the same label, the cost of searching for people with specific skills and experience would be reduced<sup>15</sup>. It is not clear how this can possibly reduce search costs when consumers cannot identify practitioners with specific skills and experience without the use of meaningful labels.

OR

2. Having a number of registration organisations each competing to register people against the same standards of skill and experience. The Commission states that the credibility of a label established by one registration organisation may be stronger because of the potential for competition among associations to provide the most accurate label<sup>16</sup>. This however is contradicted by the Commission’s finding that additional costs are imposed on architects by multiple registration and that mutual recognition is needed to reduce them<sup>17</sup>.

OR

3. Having a number of registration organisations each competing to register people against different standards of skill and experience, with a specific label unique to each level/organisation. There is limited discussion on the use of a tiered labelling system to identify those practising at the professional level as architects and those practising at

---

<sup>13</sup> Ibid. p196

<sup>14</sup> Ibid. pp200–203

<sup>15</sup> Ibid. p116

<sup>16</sup> Ibid. p92

<sup>17</sup> Ibid. p144

different levels, such as draftspeople and the majority of building designers. It would have been interesting to have some discussion the potential effects of Gresham's law in dragging the worth of registration down to the lowest denominator in a competitive registration environment. Options that might have been considered were the opening up of Architects Acts to register practitioners at different levels, or the establishment of other registration systems for those who do not meet the requirements for professional registration. Most professions seem to accommodate different labels for different skill levels or functions within the profession.

### ***Costing of Alternatives***

There seems little recognition that all regulation schemes that identify skilled and experienced practitioners must have the same basic characteristics and costs of administration. Standards must be set, courses accredited, candidates examined and a register maintained. Performance must be monitored and failures disciplined. It is likely that the cost of administering such a scheme through a statutory board will be little different from the costs of a professional association doing the same thing<sup>18</sup>. The lack of a rigorous and fair comparison of costs for alternative approaches detracts from the Productivity Commission recommendations.

### ***Likely Changes to the Regulatory Environment***

The review of legislation generally, and building industry legislation in particular, is likely to encourage substantial reform. In Western Australia there are well developed proposals for a new *Building Act* along similar lines to that in Victoria and some moves towards security of payment on either the New South Wales or Queensland models.

Whilst the Productivity Commission's preferred recommendation is the repeal of Architects' Acts, the Commission recognises that a number of jurisdictions have, or are establishing, regulatory frameworks requiring registration of building practitioners. The Commission gives some attention to the regulatory environment in Victoria<sup>19</sup> and recommends a series of principles for registration of architects within such a framework<sup>20</sup>, including:

- Broad representation on registration boards.
- No restrictions on practice.
- Title restriction for registered architects and freeing up of derivatives.
- Registration of persons, not companies.
- Transparent and independently administered complaints and disciplinary procedures.
- Contestability of certification.

Most of the principles recommended are embodied in the amendments already suggested by the Architects Board and the AACA for updating the *Architects Act 1921*, and apply equally well to regulation of architects under specific Architects Acts or under generic building practitioner regulatory Acts. The Commission's review provides no detailed analysis of this type of broader regulatory environment which would be useful in determining appropriate future legislation.

In completing the State review, CAMS has carefully considered the Productivity Commission Inquiry Report and supports adoption of those principles/recommendations that can be supported by independent analysis.

## **3.4 THE ERM MITCHELL McCOTTER REVIEW**

The Department of Contract and Management Services sought submissions from firms on the Treasury Panel for National Competition Policy (NCP) Legislation Reviews and contracted ERM Mitchell McCotter to undertake the economic analysis of the West Australian *Architects*

---

<sup>18</sup> Ibid. p136

<sup>19</sup> Ibid. p169, p197

<sup>20</sup> Ibid. p202

*Act 1921* and prepare a report that conformed with the Treasury NCP *Legislation Review Guidelines*. The resulting report, *National Competition Policy Review of the Architects Act 1921 and Subordinate Legislation*, is attached at Appendix 1.

In conducting its analysis, ERM Mitchell McCotter considered submissions from both the general public and from a number of key organisations that provide broad representation of interests in relation to regulation of Architects; as well as the findings of the Productivity Commission Inquiry Report and the drafting instructions for the proposed *Building Act*.

The ERM Mitchell McCotter report is of direct relevance to this State review because it is specific to the Western Australian *Architects Act* and identifies potential restrictions based on the actual provisions of the Act. The report provides detailed, methodical economic analysis in accordance with the Treasury NCP *Legislation Review Guidelines* to formulate its recommendations.

Some caution is warranted in the interpretation of ERM Mitchell McCotter's assessments and adoption of its recommendations at face value. ERM Mitchell McCotter recommends two options to address the identified restrictions<sup>21</sup>. The first option suggests retention of the *Architects Act* subject to a number of amendments. The second option suggests repeal of the Act, noting

*"repeal of the Act is considered by the reviewers to be the outcome most consistent with the requirements of the Competition Policy Agreement"*.<sup>22</sup>

The repeal option has to be assessed in the context of the lack of hard evidence, the reliability of the cost/benefit approach required by the Competition Principles Agreement and some confusion about the operation of registration under the current Act.

### ***Lack of Hard Evidence***

Like the Productivity Commission review, the ERM Mitchell McCotter review is impeded by a lack of hard evidence available from which to draw definite, verifiable conclusions. The report acknowledges this lack of evidence and notes:

*"As a result of a lack of quantitative data on the market for building design and construction management services, costs and benefits of the restrictions were assessed largely at an "in principle" level, with assessment relying largely on judgement."*<sup>23</sup>

### ***Competition Principles Agreement Methodology***

The methodology for carrying out a National Competition Policy review is set out in the *Legislation Review Guidelines* published by State Treasury.<sup>24</sup> The key to the methodology is the public benefit test that requires it to be demonstrated that the benefits to the community as a whole outweigh the costs<sup>25</sup>.

The acknowledged lack of quantitative data and the need to rely on anecdotal evidence and reviewers' judgement means that assessments of net cost or benefit are unreliable where there is only marginal difference. The uncertainty over whether an effect is a net cost or benefit makes it difficult to demonstrate that the benefits as whole outweigh the costs, and therefore in strict accordance with the methodology, ERM Mitchell McCotter has been bound to recommend repeal as one of the options.

---

<sup>21</sup> Op. Cit. pp 108-109

<sup>22</sup> Ibid. p 109

<sup>23</sup> Ibid p vii

<sup>24</sup> WA Treasury Competition Policy Unit *Legislation Review Guidelines* Perth April 1997

<sup>25</sup> Ibid. *Existing Legislation* p 6

### ***Confusion About Current Registration***

Although ERM Mitchell McCotter identifies 10 potential restrictions to competition within the Act, they assess that only two of these impose any significant net public cost.

The first of the two restrictions assessed as imposing a net public cost is the potential barrier to registration by persons who do not meet the prescribed criteria.<sup>26</sup>

The basis of this restriction is that registration requirements may be overly burdensome for a small number of practitioners, who are therefore unable to use the title “architect”, and suffer competitive disadvantage amongst a particular client group in one sector of the market. ERM Mitchell McCotter argues the requirements for registration could restrict competition if both of two conditions apply:

1. The requirements give rise to a significant barrier to registration as architects for persons providing or desiring to provide building design and construction management services; and
2. By virtue of use of the title “architect” and associated terms in description of services, a registered architect gains a competitive advantage in the market for building design and construction management services.<sup>27</sup>

In discussing “*barriers to registration*”, ERM claim the principal barrier to registration is the requirement for possession of a Bachelor of Architecture degree (or accredited equivalent) in order to be eligible to register.<sup>28</sup> ERM go on to recommend:

*“The principal requirement for registration should be the demonstration to the satisfaction of the Architects Board that an application meets specified standards in respect of capability in the provision of building design and construction management services rather than, necessarily, requiring that the applicant have completed a course of studies in architectural subjects or be a member of a prescribed institute, or be registered as an architect by another prescribed body or authority.”<sup>29</sup>*

This recommendation essentially reflects current registration practice established by the AACA and implemented by the Architects Board. The existing registration system already caters for applicants who do not hold relevant academic qualifications through the National Program of Assessment (NPrA). The NPrA is based on the National Competency Standards in Architecture. It allows applicants without formal qualifications in architecture, or whose qualification has not been assessed as equivalent to an accredited qualification, but have substantial skill and experience in the architectural profession to access the registration process.

Registration is based on demonstration of the requisite competencies and capability to exercise professional skill, regardless of whether they have been gained through:

- An Australian accredited architecture degree;
- An overseas degree recognised via Review of Academic Equivalence (RAE); or,
- The NPrA process, or Architects Board prescribed examinations.

ERM Mitchell McCotter’s assumption that the eligibility requirements to register form a barrier to registration is based on an imperfect understanding of current processes. When

---

<sup>26</sup> ERM Mitchell McCotter p 56. *Restriction 3: Ability of Persons to Practice as Architects – Training and Knowledge.*

<sup>27</sup> Ibid. p 57

<sup>28</sup> Ibid p 58.

<sup>29</sup> Ibid p110.



current process is taken into account, one of the conditions for identifying this restriction falls away.

In discussing “*market advantages arising from registration*”, ERM Mitchell McCotter identify two market segments. In the large project market, service providers are chosen for specific skills, knowledge and experience.<sup>30</sup> As demonstrated above, any person having these skills, knowledge and experience is eligible to be registered as an architect. There is therefore no restriction as there is a clear distinction between registered and non-registered people and the restriction is not arbitrary. The label “architect” is a useful and positive market distinction for those people with professional skills.<sup>31</sup>

Since neither of the conditions underpinning ERM Mitchell McCotter’s argument that the requirements for registration could restrict competition are met, the overall assessment that the restriction imposes a net public cost can be overturned.

The second of the two restrictions assessed by ERM Mitchell McCotter to impose a net public cost is the requirement that controlling interests in management and ownership of architectural firms must reside with registered architects.<sup>32</sup>

Provisions within the Act relating to this issue were previously identified by the Architects Board as requiring amendment.

ERM Mitchell McCotter goes on to recommend amendments that reflect contemporary professional practice and which will remove any restrictions on ownership, management or distribution of earnings. This restriction will therefore not apply if the Act is amended in accordance with both Productivity Commission and ERM Mitchell McCotter recommendations.

On balance, if ERM Mitchell McCotter’s assessment of a net public cost arising from the restriction relating to registration is revised to allow for the NPrA process, the overall assessment of the Act would produce a net public benefit and hence its repeal would not have been suggested.

The ERM Mitchell McCotter review acknowledges that the economic case for repeal of the Architects Act is marginal and has recognised that separate investigation and assessment of component issues can enhance inherent benefits. The review identifies significant benefits in relation to consumer information, consumer protection and international competitiveness resulting from the Act and recommends individual amendments to address the less desirable features of legislated registration and enhance the net positive outcome of the Act.

In general, these recommendations are both sound and progressive and align with the enhancements previously proposed by the Architects’ Board and the AACA, and are also consistent with the intent and objectives of proposed general building regulation reform.

---

<sup>30</sup> Ibid p 59.

<sup>31</sup> Ibid p 60.

<sup>32</sup> Ibid p 73.

# 4 REGULATION OF PROFESSIONS

## 4.1 LEGISLATION REVIEWS OF PROFESSIONAL REGISTRATION

### *Consistency of Approach*

Architecture is one of a number of recognised professions that, up to now, have had similar professional structures and regulation systems. The nearest equivalent in these terms are medicine and the law. These professions have both voluntary professional bodies and colleges and legislated regulatory boards.

It is anticipated that the various professions will pursue best practice approaches to administrative arrangements in their regulation where possible and consequently some consistency in these areas will result across the professions. Each profession however, will have issues particular to it and these must be recognised as such and not arbitrarily considered to apply to all professions.

Reviews of legislation governing other professions may well provide useful input into consideration of the *Architects Act*. One of the requirements set by CAMS for the State review was that it should take into account reviews of other legislation and the effect of the *Professional Standards Act 1998*. Unfortunately the relatively late start to reviews of other professions has limited the contribution from these sources, but where possible suggestions for reform of other professions have been considered.

### *Vested Interests and Potential Bias*

One of the fundamental precepts of popular economics that impacts on the professions is the view expressed by Adam Smith that:

*“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”*<sup>33</sup>

From this has grown the view that professions are anti-competitive, and that regulation of professions needs to be justified on economic grounds. Occupational registration is, in itself, evidence of market failure. That is failure of the open market to provide the right quality of services at the right price without undue risk of loss to the consumer or society. Loss could result from incompetent provision of services, costs involved in locating a competent service provider (“transaction costs”), costs to parties not involved in a service transaction (“negative spillovers”) and loss or abuse as a result of the disparity of information (“information asymmetry”) between the supplier of services and the consumer of services.

For Governments to act on these issues the arguments for or against legislated regulation must be supported by robust and repeatable evidence. The Competition Principles Agreement sets up a framework for review of all potentially anti-competitive legislation, including legislation that regulates professions. This methodology is based on a set of popular economic theories that open, vigorous competition is the most efficient means through which to allocate the community’s resources. There is a presumption that only price competition matters and the prescribed methodology includes some very contrived ways of attempting to price social values<sup>34</sup>.

---

<sup>33</sup> Smith, Adam *An Inquiry into the Causes of the Wealth of Nations*

<sup>34</sup> *Ibid.* p 115

In practice there may also be competition on quality or timeliness of service and perceived value by the consumer. Restricting open market trade through occupational registration reflects the reality that unrestricted price competition does not always provide the best possible economic and social outcomes. The State review has to assess the outcome from the purely economic reviews in the broader context of social and government policy and the specific needs of industry development and regulation.

This balanced approach can be undermined by emotive arguments from groups holding vested interests in the outcome. Naturally enough, members of professions regulated by legislation are likely to support the *status quo*. Competitors outside the profession are likely to support change. However entities such as the National Competition Council and the Productivity Commission also have biases deriving from their economic philosophies, and to a large extent their own existence depends on the acceptance of reforms they advocate. It is essential therefore that analysis and recommendations be based on sustainable evidence. Careful and impartial review of the *Architects Act* is not helped by inflammatory statements and press releases<sup>35</sup> or the importing of issues relevant to one profession into debate on others.

### ***The Nature of Registration***

Registration or licensing of professions or trades is normally one of two types:

1. Identifying competent service providers so that the consumer may make an informed choice; and,
2. Prohibiting the carrying out of specified work without the appropriate licence.

Some professions; most notably medicine and the law, combine both forms of registration and it is perhaps no coincidence that the most virulent attacks on professional registration as restraint of trade are directed at those professions. Regulation of architecture is only of the first type, and care needs to be taken that review of architectural registration is done on its own merits without undue influence from reviews of other, more contentious legislation.

The archaic provisions in the *Architects Act* that reflect the traditional regulation of professions in the 1920s can be updated or removed as recommended by the Architects Board and the AACA, and can be made consistent with any modern practice for professional regulation that may emerge from the current round of reviews.

## **4.2 DEFINING THE PROFESSION**

As set out in the Overview, architecture is a very old profession with reasonably well defined professional standards and practices. As with most other professions, there is a broad range of skills and services that come within the ambit of the profession, and not all are carried out by professionally qualified practitioners. Thus, for example, an architects office may have registered architects supervising draftspeople in the preparation of detailed designs and documentation, graduates in architecture and trade-qualified building inspectors confirming that construction is being carried out in accordance with the plans and specifications. Some registered architects may specialise in technical or functional areas such as environmental, interiors, planning, health, education or the like. Similarly draftspeople and designers may specialise in specific areas of building technology.

Most professions acknowledge the broad scope of possible practice within them and allow for both tiering of professional qualifications and specialisation within tiers. The medical profession for example recognises tiers of medical practitioners, medical technologists, registered nurses and enrolled nurses, and specialisation within these tiers, such as surgery, obstetrics, pathology, etc. Complementing the “main stream” medical profession is a range of

---

<sup>35</sup> See, for example the National Competition Council Press Release dated 14 August 2000 *Public Interest or Self Interest?* And the conduct of the Productivity Commission hearing in Perth.

specialised and registered occupations such as physiotherapists, chiropractors, dentists and the like. Some of these, such as chiropractors and dentists have developed independently of and in competition with professional medical practitioners. Thus a person with a sore back may choose to go directly to a chiropractor rather than a registered medical practitioner.

Similar relationships exist within the architectural profession. For thousands of years, people have designed and constructed their own dwellings, rural buildings or workshops, or have turned to builders to provide these on a design and construct basis. For almost as long, people requiring specialised commercial or civic buildings and substantial residential buildings have turned to architects with professional level skills in building design and construction. A more recent development is people with originally drafting backgrounds marketing design services directly to consumers as “building designers.” Building designers have carved out a significant market in Western Australia in single residential and light commercial building; either directly to end consumers such as householders or to builders who market the finished product.

In architecture, therefore, it is possible to identify three tiers of professional service:

1. Architect—providing a full range of briefing, design, documentation and contract administration at a professional level;
2. Building Designer—providing essentially design and documentation services for residential and light commercial buildings, and in some cases contract administration;
3. Draftsperson—providing limited design and predominantly documentation services under the supervision of an architect or builder.

Naturally there is overlap between these tiers and areas of specialisation where this hierarchy is not maintained. The Productivity Commission and ERM Mitchell McCotter reviews suffer to some extent from a failure to recognise both the very broad nature of professional architectural services compared with those typically provided by specialist designers and draftspeople and the reasonably clear distinctions between the tiers. There is certainly vigorous and effective competition to architects from building designers in the one-off housing market and in some commercial sectors, and interior designers have also created a specialist market for themselves.

Any registration system in the profession must recognise the legitimate skills and aspirations of both building designers and draftspeople without falling into the trap of assuming that every person who designs a building is an architect.

### **4.3 CHANGING VIEWS OF PROFESSIONAL CONDUCT**

Before the passage of regulation Acts there was a strong view among members of traditional professions that:

- Professional standards were dependent upon the conduct of individual members of the profession;
- Each individual put its own reputation and fortune as security for its professional practice;
- The individual practiced for the benefit of the community;
- There should be no fee competition between members of the profession—practitioners would compete on quality of service;
- Individuals should not advertise their services;
- It was inappropriate for members of a profession to share fee income with non-members.

The impact of these philosophies was that professionals were obliged to practice singly or in partnership with other members of the same profession. When the State decided to support professional standards the ensuing legislation reflected these traditional views<sup>36</sup>.

### ***Fee Competition***

Since the passage of the *Trade Practices Act* in 1975 there has been a predominant view that professional practitioners should be treated as operating no differently from any other business. By declaring that professional practice is simply a business, Parliament has, in effect, struck away any right or expectation on behalf of the community that professional practitioners should have any higher responsibilities or liabilities. The most immediate impact of *Trade Practices Act* reforms was the striking down of standard fee scales and the imposition of fee competition.

### ***Firms and Corporations***

A second challenge to traditional practices came from the desire to limit liability through the use of professional indemnity insurance and the use of limited liability companies as business entities. The limiting of liability and the delivery of service through a company rather than an individual sit uneasily with the concept of individual competence and responsibility. Against this has to be considered the very real financial risks to professionals who retain unlimited personal liability when operating in a sophisticated economy where most of its clients are limited liability companies that may have only short-term interests in the outcome of the service. As a profession, architecture is particularly exposed to this, as the main clients for architects are commercial corporations pursuing business profits.

In Western Australia architects addressed this issue by amendments to the Act in 1978 to allow for the registration of firms and corporations. In order to mimic the still prevalent view that sharing professional fees was unethical, and that a professional practitioner should not put itself in a position where a non-member of the profession could dictate its actions, the amendments to the Act limited control of a firm or directors of a practising corporation to registered architects and provided for the articles of association of a firm or practising corporation to be approved by the Board<sup>37</sup>. These provisions remain current, and have previously been identified by the Board as requiring significant amendment to reflect current commercial and professional practice.

With the commercial view of professional practice now firmly entrenched in public policy and legislation there can be no fundamental objection to professional practitioners operating through corporations, sharing income with any person or shareholder or otherwise acting in accordance with normal business principles. In particular there should be no objection to multi-disciplinary firms or corporations or the listing of professional service companies on stock exchanges.

There are two issues that must be resolved if this commercial approach is to work:

#### ***Ensuring service is delivered by a qualified practitioner.***

Ultimately professional skills and experience lie with individual practitioners. If the firm or corporation employs appropriately qualified people it is capable of delivering the professional services. The most real danger is that non-professional directors or owners will require the professional to compromise standards in order to maximise profits. The best protection against this is a robust independent accreditation/registration system that can intervene on behalf of the professional or the consumer and ensure that proper standards are maintained. It is arguable that the only way the *Trade Practices Act* was

---

<sup>36</sup> *Architects Act 1921*, Section 21 as originally enacted. Section 22A inserted by the *Architects Act Amendment Act 1956*

<sup>37</sup> *Architects Act 1921* Sections 14A, 14B, 14C, 14D.

able to work in respect of professional services is because there were already robust registration regimes in place.

### ***Applying a professional title to corporations.***

Once corporations are accepted as a legitimate vehicle for delivery of professional services it followed that they should be put on the same regulatory basis as individuals. With the Act restricting the title “architect” to registered persons it also followed that corporations should be registered if they were to enter into professional contracts or wished to have the title “architect” in their name. However, where professional service is delivered by individuals, a corporation cannot logically claim to have professional knowledge and experience. This issue was addressed by restricting ownership and management of corporations to qualified professionals. This, however, does restrict the commercial freedom of both professionals and non-professionals. The issue of title protection and how it can be managed in a modern context is discussed separately. The essential principle is that a person (natural or corporation) cannot hold itself out to be capable of providing professional services unless it has an appropriately qualified professional person to deliver that service.

### ***Advertising***

Restrictions on advertising of professional services were a key part of traditional professional regulation. In the current *Trade Practices Act* regime where delivery of professional services is considered no different from any other commercial activity and where there are strict penalties for misleading and deceptive conduct there is little or no justification for restrictions on advertising. The Board and the AACA have recognised this and their various recommendations for updating the Act include repealing of the provisions that restrict advertising.

### ***Regulatory Boards***

The traditional professions come from a regime of self-regulation through membership of professional bodies. Professional registration legislation was originally enacted to support existing professional standards and the view that members of a profession should regulate their peers. Thus the Architects Board set up under the *Architects Act* provided for the majority of members (6) to be elected by registered architects from among their number, with the remaining members being nominated by the Royal Australian Institute of Architects (1) and the Governor (3). Although the Act does not specify that the RAIA nominee or the Governor’s appointees should be architects, in practice the Board has almost always consisted of registered architects. Over the past 5 to 10 years the Governor’s appointees have included non-architects as representatives of consumers of architectural services, but the Board has remained dominated by members of the profession.

Although the *Architects Act* requires the Board to set standards for courses of architectural study and for practical experience leading to registration, in practice the setting of these standards is left to specialist groups such as the Architects Accreditation Council (AACA). The day-to-day operations of the Board are of a more administrative nature. The Board still undertakes disciplinary matters, but this is relatively rare. Therefore there is reduced need for the Board members to be expert in professional practice.

In occupations that have more recently become registered by statutory boards the trend is to make consumer protection the dominant function and to ensure that the board is not dominated by sectional or professional interests. In addition, where boards have disciplinary functions, there is strong pressure to have the board or disciplinary tribunal chaired by a lawyer to ensure that procedural fairness is afforded to those being disciplined.

The most recent general review of registration boards in Western Australia is the 2000 Gunning Committee of Inquiry<sup>38</sup> into statutory boards in the portfolio of the then Minister for Fair Trading (now Consumer Affairs). The key recommendation of the Gunning Inquiry was that the plethora of individual registration boards should be brought together into a single administrative structure with a separate registration board and disciplinary tribunal. If this recommendation is taken up there will be a need to consider whether registration bodies outside the Consumer Affairs portfolio (such as the Architects Board) should be brought within this unified structure. Alternatively it may be possible to group registration within single industries such as the building industry. This is discussed in greater detail in the section on Building Industry Reform. The Productivity Commission Inquiry Report alternative recommendation that architects be registered under general building legislation also foreshadows a unified registration board.

Any new registration board that covers architects will logically embody the current best practice in terms of membership and operation. As reviews of other professional regulation legislation are still continuing it is not possible to say at this stage what best practice will be. It is likely, however, that a registration board will have the following characteristics:

- An independent chair with sound knowledge of the administrative and legal requirements for statutory boards;
- Approximately equal numbers of community/consumer representatives and professional representatives;
- Broad professional representation that includes educational institutions and levels within the profession.
- A separate professional tribunal to deal with standards and discipline.

---

<sup>38</sup> Gunning Committee of Inquiry, *Report of the Gunning Committee of Inquiry into Regulatory Boards* public release pending. The Gunning Committee of Inquiry was appointed to inquire into the effectiveness and efficiency of eight regulatory bodies within the Consumer Affairs portfolio.

# 5 BUILDING INDUSTRY REGULATION

## 5.1 BACKGROUND

The Productivity Commission Inquiry Report made a series of alternative recommendations for States intending to regulate architects as part of general building legislation. The proposed *Building Act* in Western Australia will provide such a legislative environment. Subsequent to the release of the Productivity Commission’s review, the Council of Australian Governments (COAG) established an intergovernmental working party to consider the findings and recommendations of the Productivity Commission’s review and to consider its implications for State and Territory jurisdictions.

The construction of habitable buildings and the operation of various occupations in the building industry in Western Australia are regulated by individual Acts of Parliament. There is currently little coordination or alignment between the various Acts and responsibility for administering them is split between a number of Ministers, Departments and Boards. The following table sets out the legislative environment.

<i>Legislation</i>	<i>Agency/Board</i>	<i>Minister</i>
<i>Local Government (Miscellaneous Provisions) Act</i>	Department of Local Government	Local Government
Proposed <i>Building Act</i>	Department of Local Government	Local Government
<i>Builders Registration Act</i>	Fair Trading / Builders Registration Board	Consumer Affairs
<i>Architects Act</i>	CAMS / Architects Board	Works
<i>Home Building Contracts Act 1991</i>	Fair Trading	Consumer Affairs
Proposed <i>Subcontractors Charges Act</i>	CAMS	Works
<i>Code of Practice/Building and Construction Industry Reform Bill</i>	Department of Productivity and Labour Relations	Industrial Relations

Much of this legislation is currently subject to review—primarily as a result of the Competition Principles Agreement under the National Competition Policy. The opportunity exists to review the overall regulation of the building industry to deal with a number of current issues and improve the effectiveness and efficiency of the regulatory environment. The *Architects Act* and its effect on competition for building design and contract administration services must be considered in this context.



## 5.2 CURRENT ISSUES

### ***Building Standards and Certification***

The Department of Local Government (DLG) has reviewed the process for regulating building standards and Cabinet has approved drafting of a new *Building Act* based on DLG recommendations. Building standards are to be based on the *Building Code of Australia* (BCA). Certification that buildings meet the required standards is to be made by registered Approving Building Surveyors. Legal liability for building defects is to be reformed through registration of building practitioners and compulsory insurance cover.<sup>39</sup>

### ***Building Surveyors Registration***

National agreement has been reached to upgrade qualifications for Building Surveyors and to allow for registration in two tiers based on size of building.

### ***Builders Registration***

The current builders registration system is to be retained but with registration based on a limited number of tiers based on building class as defined in the BCA.<sup>40</sup>

### ***Architects Registration***

The current *Architects Act* could be retained and developed to align with the proposed *Building Act* and the tiered approach for builders' registration.

### ***Protection of Consumers***

The *Home Building Contracts Act* provides for consumer protection in the domestic housing industry through mandatory contract provisions and allowance for insurance protection against builders default.<sup>41</sup>

### ***Protection of Subcontractors***

The Government has a policy to provide legislated protection of subcontractors from onerous payment terms imposed by head contractors and from the flow-on effects of insolvency by a Principal or head contractor.<sup>42</sup>

### ***Industry Reform and Good Practice***

The State Government published the *Code of Practice for the Western Australian Building and Construction Industry* in 1993 to support industry reform. Cabinet approved printing of the *Building and Construction Industry Reform Bill* in 1997 but it has not yet been introduced to Parliament.<sup>43</sup>

## 5.3 PROPOSAL FOR INTEGRATED REGULATION AND PROTECTION

It should be possible to provide an integrated regulation and protection environment in the building and construction industry that covers the issues outlined above while improving the efficiency of the regulation system. A number of approaches to this are available and are subject to discussion between government agencies and industry. Integrated regulation and protection would most likely have the following characteristics:

---

<sup>39</sup> The proposed *Building Act* is comprehensively documented in the Cabinet approved drafting instructions. Drafting of the Bill commenced in late 2000.

<sup>40</sup> The Ministry of Fair Trading's final *National Competition Policy Review of the Home Building Contracts Act 1991 and the Builders Registration Act 1939* report sets out the detailed reform recommendations.

<sup>41</sup> See the Ministry of Fair Trading report in 27 above.

<sup>42</sup> The Minister for Works has established a working party to investigate and make recommendations on security of payment for subcontractors.

<sup>43</sup> The final draft of the *Building and Construction Industry Reform Bill* has not been publicly released.

### ***Building Standards***

All buildings should be required to comply with the *Building Code of Australia*. Designs for proposed buildings shall be independently checked for BCA compliance by appropriately registered building practitioners and a building licence issued by a registered building surveyor. A registered builder must certify the building has been constructed in accordance with the approved designs. For appropriate BCA classes the building cannot be occupied until a certificate of occupation is issued by a registered building surveyor. Formal building records will be lodged in an approved repository and be available for public inspection.<sup>44</sup>

### ***Building Practitioners***

Building practitioners able to certify that buildings have been designed and constructed in accordance with the BCA shall be registered. Registration can be limited to architects/building designers, engineers and building surveyors. Building licences should only be issued to registered builders. Practitioners and builders will be registered for specific classes of building.<sup>45</sup>

### ***Liability***

Liability for building defects shall be limited to ten years from the date of certification by the builder that the building is complete, or the issue of a certificate of occupancy, whichever is the later. Liability for damages will be on a proportional basis.<sup>46</sup>

### ***Prescribed Contracts***

Building contracts will be required to have minimum basic provisions covering payment, insurance, dispute resolution and default. Requirements may vary for different classes of building, allowing greater protection for domestic building contracts and retaining flexibility for industry-standard commercial contracts.<sup>47</sup>

### ***Compulsory Insurance***

A building licence will be issued with a certificate of compulsory insurance covering the period of statutory liability. The insurance premium will form part of the licence fee and the certificate will be attached to the formal building records. Insurance will cover:

- Financial default of the builder (protecting the owner and subcontractors);
- Design defects (protecting the owner, occupants and registered building practitioners);
- Construction defects (protecting the owner, occupants and registered builders);
- Damage to adjoining buildings.<sup>48</sup>

### ***Dispute Resolution***

A building disputes board will provide rapid access to dispute investigation and resolution processes. It will cover statutory requirements where no written contract exists and can be referenced by contracts if required.<sup>49</sup>

---

<sup>44</sup> This is consistent with the approved drafting instructions for the proposed *Building Act*. The detailed processes and form of the Bill could be adapted during drafting to suit this integrated proposal.

<sup>45</sup> This is intended to limit the amount of licensing or registration required. It leaves undefined whether building design is completely unregulated (as at present) and issue of a building licence is subject to independent checking by registered people, or whether a registered designer can certify compliance and issue of a building licence is evidence that certification has been provided for all relevant aspects.

<sup>46</sup> This is consistent with the drafting instructions for the proposed *Building Act*.

<sup>47</sup> This expands the scope of the current *Home Building Contracts Act* to all building contracts and requires some development to allow for commercial buildings.

<sup>48</sup> This is based on the drafting instructions for the proposed *Building Act* but develops the concept further to allow protection for subcontractors and builder default. It leans more towards the building insurance scheme current in France and will require discussion with the insurance industry.

<sup>49</sup> This could be achieved by expanding the current role of the Building Disputes Committee established under the *Builders Registration Act*, subject to accommodating any relevant recommendations of the NCP legislation review of that Act and / or of the Gunning Committee of Inquiry into the operations of the Committee.

## 5.4 LEGISLATION REQUIRED

This proposal could be implemented using current legislation, modified appropriately, and supplemented with additional legislation where gaps cannot be readily accommodated. Alternatively a new set of legislation could be enacted to simplify the current environment. The following legislation would be appropriate:

### ***Building Standards***

A *Building Act*, substantially along the lines of that proposed by DLG, would provide for:

- building standards in accordance with the BCA;
- building licences and certificates of occupation to be issued by a registered certifier;
- compulsory insurance as part of the building licence;
- limitation of liability for building defects;
- proportional liability for building defects;
- compulsory lodgement of building records; and,
- enforcement.

### ***Registration***

A single *Building Practitioners Registration Act* or a series of registration Acts covering architects/building designers, engineers, builders and building surveyors providing for:

- registration in specific BCA classes of building (e.g. class 1/2 domestic/residential, class 3-9 commercial/public, class 10 non-habitable)
- registration in specific facets of the BCA (e.g. structure, fire resistance, access and egress, services and equipment, health and amenity, special use, etc.);
- continuing professional education;
- penalties and de-registration;
- conditional and temporary registration; and,
- compulsory insurance;

### ***Industry Conduct and Consumer Protection***

A *Building and Construction Industry Standards Act* that provides for:

- minimum contract conditions including payment terms;
- tendering processes;
- codes of practice;
- dispute resolution; and,
- sanctions

## 5.5 ISSUE OF BUILDING APPROVALS

### ***Background***

The issuing of building permits under the current *Local Government (Miscellaneous Provisions) Act 1960* is an administrative process controlled by local authorities. The drafting instructions approved by Cabinet for the proposed *Building Act* provide for building permits to be issued by approving building surveyors who may be in independent professional practice, or employed by the State or local governments.

### ***Building Permits***

A building permit is a certificate that the design of a building meets the standards set out in the *Building Code of Australia* (BCA) for the relevant class of building. It can be issued conditionally, or for part of a building, and cannot precede, or be inconsistent with a planning approval.

### ***Checking and Approval Process.***

The approving building surveyor has three broad functions in checking the design of a proposed building before issuing a building permit:

1. The design must comply with the BCA.  
This involves using personal knowledge and experience to check those facets of the building that the approving building surveyor is competent to check, and seeking compliance certificates from competent building practitioners that all other facets of the building comply.
2. Confirming the design complies with any planning approvals.  
This is essentially an administrative process requiring confirmation that planning approval has been granted and that the proposed building complies with that approval.
3. Consulting relevant reporting authorities.  
Reporting authorities are official bodies such as Fire and Emergency Services, Heritage council, local authorities and the like. *Building Act* regulations will specify what matters must be referred to reporting authorities and a building permit cannot be issued until a response is received from the relevant authority.

The primary functions and capabilities of an approving building surveyor are knowledge and experience of the process requirements and a sufficient understanding of building generally to understand and coordinate the technical issues raised in compliance certificates and responses from reporting authorities.

### ***Compliance Certificates and the BCA***

The BCA is a complex set of design rules and standards covering ten classes of building and seven groups of technical provisions. Few, if any, individuals are professionally skilled and experienced to undertake the complete design or compliance certification of complex buildings. Building practitioners have therefore specialised in specific professions or disciplines and design of complex buildings is generally undertaken by consulting teams of architects, engineers and designers.

Just as no individual can completely design a complex building to conform with the BCA, it is unlikely that a single approving building surveyor would be able to undertake a full compliance check. This is recognised in both current practice and the proposed *Building Act* where a compliance certificate from a “competent building practitioner” is acceptable as evidence of compliance with the BCA.

At one extreme it is possible that an approving building surveyor may have substantial professional qualifications and experience and may be competent to check and certify simple buildings in their entirety, or parts of complex buildings. At the other extreme it is possible for an approving building surveyor to rely totally on compliance certificates from others and restrict its involvement to the purely administrative functions.

### ***Independent Checking or Self-Certification***

There is at present no restriction on who can design buildings and present them to a local authority building surveyor for approval. The local authority is expected to independently check the design for compliance with the appropriate building regulations. The current building approval process dates from a time when the building codes were comparatively simple and prescriptive and in most cases a building surveyor could take a “rule book” approach to checking.

As the BCA has become more performance based and the complexity of buildings being constructed in local authority areas has increased it has become effectively impossible for the local authority building surveyor to competently check every facet of every design presented for approval. Building surveyors have dealt with this by requiring building owners to provide “engineer’s certificates” that technical aspects of the building comply with the BCA. This has

introduced an element of “self certification” into the checking process, as most owners will request the design engineer to provide the certificate.

The *Building Act* drafting instructions do not address whether the checking process is intended to be fully independent, with the approving building surveyor commissioning its own building practitioners to check prescribed aspects of the design, or fully self-certified, with registered building practitioners able to state that the design complies with the BCA.

At one extreme, the Act could provide for independent checking only. This would restrict the number of building practitioners necessary to be registered under the Act to only those who wished to practice as checkers, and would leave the design of buildings unregulated as at present. There are very sound grounds for requiring independent checking of systems where failure puts life at risk. In disciplines such as structural engineering, independent checking is normal process. There could be additional costs in providing a building permit because of the additional people involved.

At the other extreme, the Act could require that buildings must be designed by registered building practitioners who must provide compliance certificates with each application for building approval. The role of the approving building surveyor could then concentrate on the administrative functions. This would reduce the checking costs, but probably increase design costs as “amateur” design would no longer be acceptable.

The middle ground would suggest that any person should still submit a design for approval, but where compliance certificates are not supplied with the application the approving building surveyor must commission an independent check, and structure the fee accordingly. It would be possible for regulations to specify that appropriate technical aspects be subject to approved independent check; either as part of the design process and certified accordingly, or through the approving building surveyor.

## 5.6 REGISTRATION

There is a need for some form of registration system that will identify both approving building surveyors and competent building practitioners in respect of class of building and technical provisions. Building practitioners are defined as:

- architects;
- builders;
- building designers;
- draftspersons;
- engineers; and
- project managers

The *Building Act* drafting instructions propose that all building surveyors and building practitioners will be registered under either:

- the *Building Act*;
- other existing legislation (e.g. *Builders Registration Act*, *Architects Act*); or,
- a suitable accredited body (e.g. National Professional Engineers Register).

### **Registration Strategies**

There is clearly a need for registration to be simple, cost effective and consistent. There are two logical approaches to consistent registration:

1. A single registration system.

This would require the establishment of a single registration authority to cover all building-related occupations. It could be set up under the *Building Act* or could be established under separate legislation. It would require the repeal of the existing *Architects Act* and *Builders Registration Act*.

A single registration system based solely on BCA competencies may not be best when professional work by engineers, architects and others goes much wider than habitable buildings. The current *Building Act* proposals allow for a very simple accreditation process with no registration board in the expectation that existing separate registration systems will be used.

2. Separate registration systems

This would build on existing legislation and processes, but would require registration to be specifically targeted at BCA competencies. There is scope to group related entities under existing systems to reduce administration costs. Architects, building designers and draftspeople could be registered under the *Architects Act* and builders and project managers under the *Builders Registration Act*. Engineers could remain under the current, non-legislated, National Professional Engineers Register, or could be brought under a new legislated scheme if appropriate.

### **Registration Methodology**

The BCA classifies buildings into ten classes and recognises seven broad aspects of building performance. These can be combined to give a matrix of building competencies as the basis for a registration methodology. In theory it would be possible to register practitioners in each aspect for each class; giving a total of 70 classifications. In practice, building practitioners would be competent over many of these detailed classifications and administrative simplicity would require much broader classifications. The current review of the *Builders Registration Act* recommends the use of three tiers; outbuildings, domestic and commercial. This may be too broad for design purposes and does not recognise the significant specialisation between design for accommodation and design for commercial purposes. A better grouping may be: domestic, multi-residential, commercial, public, and outbuildings.

Class	General Provisions	Structure	Fire Resistance	Access & Egress	Services & Equipment	Health & Amenity	Ancillary Provisions
1			<b>Domestic Residential</b>				
2							
3			<b>Multi-Residential</b>				
4							
5							
6			<b>Commercial</b>				
7							
8							
9			<b>Public Buildings</b>				
10			<b>Non-Habitable Outbuildings</b>				

The seven design aspects recognised in the BCA also divide reasonably naturally into existing disciplines:

Class	General Provisions	Structure	Fire Resistance	Access & Egress	Services & Equipment	Health & Amenity	Ancillary Provisions
1			<b>Domestic Residential</b>				
2							
3			<b>Multi-Residential</b>				
4							
5							
6			<b>Commercial</b>				
7							
8							
9			<b>Public Buildings</b>				
10			<b>Non-Habitable Outbuildings</b>				
<b>Discipline</b>	<i>Architecture</i>	<i>Structural Engineering</i>	<i>Structural/ Mechanical/ Fire Service Engineering</i>	<i>Architecture</i>	<i>Mechanical/ Electrical Engineering</i>	<i>Architecture</i>	<i>Architecture</i>

It is therefore possible to register members of various disciplines against classes or groups of classes of buildings. An approving building surveyor would then be entitled to rely on a compliance certificate from an appropriately registered member of the appropriate discipline for the relevant design aspect.

***Registration Within Disciplines***

There is scope for various levels of registration within each discipline that reflect the organisation of a particular profession or specialisation within professions. There is also scope for registration to cut across traditional professional roles to recognise specific competencies. These issues are generally being considered and resolved by professional bodies and regulators as part of National Competition Policy reviews and in response to commercial pressures.

***Registration of Paraprofessionals***

The professions recognise a hierarchy within the discipline. Within the engineering professions it is traditional to recognise draftspeople, technicians and professional engineers. Within the architectural profession it is traditional to recognise draftspeople and architects, with a separate group of building designers spanning the roles between the two.

It is likely that some paraprofessionals can demonstrate competence to certify compliance with specific parts of the BCA and should reasonably be registered to do so. Building designers working in the single residential domestic market would have a similar understanding of BCA requirements for class 1 buildings, as an architect working in the same field. Specialist designers in engineering fields such as plumbing are recognised as having the pre-eminent knowledge of design rules in their speciality. Any registration system that underpins the issue of compliance certificates to approving building surveyors should allow for the registration of paraprofessionals in appropriate areas.

In order to avoid the need for separate registration regimes for paraprofessionals it is desirable that existing professional registration systems be adapted to allow for tiered registration that includes paraprofessional competencies.

## 6 PROTECTION OF THE TITLE “ARCHITECT”

The traditional professions of Medicine, Dentistry and the Law are regulated by statute in Western Australia<sup>50</sup>. In each case there are restrictions on unregistered persons holding themselves out as qualified professionals:

### *Medical Practitioners Act Section 19.*

#### ***Only a medical practitioner to practice or profess to practice medicine***

*From and after the passing of this Act no person other than a medical practitioner shall be entitled to —*

*(1) practice medicine or surgery in all or any one or more of its branches; or to*

*(2) advertise or hold himself out as being, or in any manner to pretend to be, or to take or use the name or title, (alone or in conjunction with any other title, word, or letter) of a physician, doctor of medicine, licentiate in medicine or surgery, master in surgery, bachelor of medicine or surgery, doctor, surgeon, medical qualified or registered practitioner, apothecary, accoucheur, or any other medical or surgical name or title; or to*

*(3) advertise or hold himself out, directly or indirectly, by any name, word, title or designation, whether expressed in words or by letters or partly in the one and partly in the other (either alone or in conjunction with any other word or words) or by any other means whatsoever, as being entitled or qualified, able, or willing or by implication suggests that he is able or willing or in any manner pretends to practice medicine or surgery in any one or more of its or their branches or to give or perform any medical or surgical service, attendance, operation or advice or any service, attendance, operation or advice which is usually given or performed by a medical practitioner.*

### *Dental Act Section 49.*

#### ***No person other than dentist to use name or title of dentist, etc.***

*(1) No person other than a dentist, and no company, shall take or use, or by inference adopt or otherwise hold himself or itself out as being entitled to use the name or title of “dentist”, “dental surgeon”, “dental practitioner”, “mechanical dentist”, or any other name, title, word, letters, addition, or description implying or tending to the belief that he or such company is registered as a dentist under this Act, or is entitled to practice dentistry, or is carrying on alone or with others the practice of dentistry.*

*(2) No company and no dentist or person other than a person or persons authorized to use a firm-name by section 56 shall take or use or have attached to or exhibited at any place the description “dental company”, “dental institute”, “dental hospital”, “dental college”, “college of dentistry”, “school of dentistry”, or any other description in which the word “dental” or “dentistry” appears that implies or tends to the belief that the business or practice of dentistry is carried on in that place but this subsection does not prevent a dentist from taking, using, or having attached to or exhibited at any place a description referred to in subsection (1).*

### *Legal Practitioners Act Section 80.*

#### ***No unqualified person to hold himself out as a practitioner***

*No person other than a practitioner shall in any manner purport or pretend to be, or make or use any words or any name, title, addition, or description implying or tending to the belief that the person is, a practitioner or recognized by law as such.*

---

<sup>50</sup> Medical Act 1894, Dental Act 1939, Legal Practitioners Act 1893.



These provisions are similar in style and intent to Section 29 of the *Architects Act* that provides:

***Unregistered persons not to practice as architects***

*(1) A person, other than a registered architect, practising corporation or practising firm, who or which —*

*(a) takes, uses or adopts the title or description of architect, or architectural practitioner; or*

*(b) uses any name, title, words, letters, additions, or descriptions implying or leading to the belief that such person is, or by words or conduct holds out or in any way implies that such person is —*

*(i) registered under this Act;*

*(ii) qualified under this Act to practice as an architect; or*

*(iii) is carrying on the practice of architecture,*

*commits an offence.*

Restriction on title is a normal part of professional regulation. It allows a consumer of professional services to know that a person using that title has demonstrated a known level of professional skills. The fundamental meaning of the term “architect” has always been to describe a professional designer of buildings. There has been no suggestion in the Productivity Commission or ERM Mitchell McCotter reviews that building designers and contract administrators with professional level training and operating at the professional level should abandon the use of the label “architect” or its derivative terms. Indeed it would be puerile to suggest that architects should no longer call themselves architects.

Objections to current restrictions on use of the label “architect” are based on two grounds:

1. There are people active in the market for building designers and contract administrators who do not meet the skill and experience levels set for registration as an architect. Consumers (say in the market for design of a dwelling) may not know that these people are competing for work against architects, and may therefore not get the best deal, or may use up excessive resources in tracking down non-architect providers.

The economic reviews have not provided any evidence that this in fact occurs, or that there is a tangible cost incurred. There are no economic or logical grounds for debasing the label “architect” to include those who cannot meet the established professional level of skill and experience. It is open to those competing with architects to develop their own brand and market it to consumers. The success of the “building designer” label demonstrates how this can be done. It is clearly in the consumer’s interest to have accurate labels that describe the different levels of skill and experience on offer.

2. Derivatives of the word “architect” (such as “architecture,” “architectural”) and colloquial usage (such as “architect of the economy,” “systems architect”) have already debased the label and trying to restrict its use by legislation unreasonably distorts normal usage.

There is no doubt that derivatives and colloquial usage are widespread. The same is evident with words used in other professions. There are saw doctors and tree surgeons. We doctor ourselves with medicine and operate on machines. It is a fundamental characteristic of English that existing words and expressions are continually given new or extended meanings. Colloquial usage of derivatives of the term “architect” does not in itself justify abandoning title protection.

The most serious issue in restricting use of derivatives is the possibility of inadvertent breaches of the Act and/or oppressive prosecution of such breaches. When advised of a potential breach, it is the Architects Board’s normal practice to bring the breach to the attention of the relevant person and ask that it be stopped. It is only after an escalating series of correspondence that the Board will prosecute a continuing breach. Prosecutions are therefore rare.

In Western Australia the issue of title restriction and use of derivatives has become more critical because building designers feel impeded by a very strict reading of Section 29 of the Act by a magistrate in 1995.

Building designers or the general public should be able to use such terms as “architecture” and “architectural” to describe buildings or aspects of building-related services, so long as such use does not misleadingly imply that a person is a registered “architect” under the Act.

The tiered registration system encompassing building designers and architectural draftspersons, proposed as part of general building industry legislation reform would help clarify appropriate usage within the building industry and remove the threat of unreasonable prosecution of building designers. A registered draftsperson or building designer could not claim the label “architect”, but they could say that they provide architectural services as a draftsperson or building designer. This would allow consumers to identify potential service providers and to distinguish the appropriate level of practitioner to best meet their needs.

## 7 CONCLUSIONS

The Productivity Commission and ERM Mitchell McCotter reviews of legislation regulating architects only considered in detail one facet of what is an established and varied profession. They have looked at price competition for building design and contract management services and the effect of reserving the title “architect” for providers of professional level services in that market.

The terms of reference and required methodology for NCP legislation reviews limit their scope to essentially economic factors. It is also necessary to consider the public interest in respect of other factors—most notably the impending reform of general building industry legislation.

This State review considers the *Architects Act 1921* of Western Australia. While its outcome must be recommendations that are in the best interests of Western Australians, the review cannot ignore national and global interests and outcomes.

The State review has confirmed that detailed reforms previously put forward by the Architects Board will improve the current *Architects Act* by reducing impediments to competition and promoting transparency and accountability of the Board.

Examination of registration and certification options to support the proposed *Building Act* indicate that retention and enhancement of legislated registration of architects is both viable and sensible.

Economic analysis of the market for building design and contract administration services cannot demonstrate that reserving the title of architect to those who have demonstrated a professional level of skill and experience has any tangible effect on competition.

### 7.1 LEGISLATED REGISTRATION

NCP legislation reviews have not been able to determine by economic analysis, within the limits of accuracy of the evidence available, whether there is a net public benefit or a net public cost in retaining a registration system for architects based on the current *Architects Act 1921*.

The essential outcome of both the Productivity Commission report and the ERM Mitchell McCotter report is that legislated registration is economically marginal. The prescribed methodology for such reviews requires a net benefit to be demonstrated and encourages consideration of non-legislative approaches.

Globally there is strong commitment to the view that architecture is a vital profession whose practitioners should be recognised and registered by the State. The NCP legislation reviews confirm that a legislated certification system may be necessary to enable exporters of building design and contract management services to compete in overseas markets. The lack of legislated certification will fall hardest on small practices. The reviews also confirm that statutory accreditation of architecture courses encourages overseas students to study architecture in Australia. The flow-on effects of Australian based or Australian trained architects specifying Australian products or techniques and thus opening up opportunities for other Australian businesses should not be ignored.

There is more to the national interest than economic prosperity. The lasting monuments to a culture or a civilisation are its buildings. The core of a society is what it values and we must be careful of the cynical view that knows the cost of everything and the value of nothing. A fundamental reason for the structure of professions within our society is to demonstrate the

value we place on the learning of its practitioners and its value to our society's well being. The passing of laws by the representatives of the people to restrict honourable titles to those who have committed their specialist skills in the public interest is an important way of recording our values and civilisation. To downgrade the public status of architecture as a learned and valued profession is a potent statement to the nation and the world that we do not value our own culture and its monuments.

There is no evidence to show a benefit from abandoning legislated registration. Conversely there is evidence to show that properly reformed legislation has a net benefit, particularly when aligned with future building industry reform. There are dangers if Western Australia moves precipitately ahead of the rest of Australia, and if Australia moves ahead of the rest of the world in abandoning a world-standard registration system. There should be sufficient accurate economic data available and more analysis of the current approach to architectural registration and greater assurance of international consistency before repeal of the Act can be safely considered.

The national and international status of Western Australian architects should be supported on both economic grounds to ensure international competitiveness and on civic grounds to demonstrate the cultural importance of architecture and the built environment to Western Australia. Overall there is a compelling case to maintain legislated registration of architects in Western Australia.

## 7.2 ADMINISTRATIVE IMPROVEMENTS

Proposals for reform of the *Architects Act* put forward in specific terms by the Architects Board of Western Australia, in general terms by the AACA, were held over by the State in anticipation of the NCP legislation review process.

Both the Productivity Commission and ERM Mitchell McCotter reviews identified these administrative improvements and concurred that their implementation would address most of the detailed anti-competitive issues raised in the economic reviews. These reforms are sound and should now be implemented. In general terms they will provide for:

- Wider community and industry representation on the Architects Board;
- Removal of restrictions on advertising;
- Simpler registration of firms and corporations, with minimal restriction on control or ownership;
- Use of annual registration and practice certificates to ensure current professional skills and knowledge;
- Clearer definition of use of the words *architect* and its derivatives.

These administrative reforms align closely with proposals for other professional registration systems, such as legal practitioners, medical practitioners and dentists. In the interests of consistency it would be desirable to implement these reforms for all professional groups at the same time so that identical legislative provisions are used.

These improvements are not contentious and can be implemented immediately, depending on alignment with other professions and legislative priority. Such improvements will deal with the known difficulties in the Act and can be seen as the first step in developing an integrated system of registration in the broader area of building design and certification to meet the needs of the proposed *Building Act*.

### 7.3 BUILDING STANDARDS

The science and technology of building design and construction has developed significantly since the passing of the *Architects Act* in 1921. Current and pending changes to the legislation regulating building standards in Western Australia recognise the need to identify and to restrict the certification of standards to competent practitioners. This presents a strong argument for the continued and enhanced registration of architects and other building practitioners. The economic reviews have considered the non-legislated registration of engineers as a suitable model for architects. The effect of the proposed *Building Act* is to impose a legislated registration system on engineers and other building practitioners. The needs of public safety in a complex building environment do not support the watering down of registration systems, and suggest that restrictions on practice should be introduced.

There is an express intention under the proposed *Building Act* to register building practitioners, including architects. As currently approved by Cabinet for drafting, the *Building Act* will rely on the existing *Architects Act* for registration of architects. It is possible to extend the coverage of the current Act to cover some or all other building practitioners. Equally, it is possible to repeal the current Act and replace it with new legislation that covers all building practitioners. Whichever course is chosen, the registration system will need to be basically the same.

An effective registration system should reflect both the tiering of professional standards in building design and contract administration and the ongoing competence of practitioners to certify compliance with relevant provisions of the BCA. Such a system should:

1. Provide specific registration of practitioners meeting the skill and experience levels of;
  - (i) draftsman;
  - (ii) building designer;
  - (iii) architect

A person registered at the appropriate level should be entitled to use the appropriate occupational description unless that registration is suspended or cancelled by the Board.

2. Provide for annual practice certificates to be issued in respect of BCA disciplines and building classes.

A practitioner with the appropriate practice certificate should be entitled to certify compliance with the BCA for the purpose of issue of a building licence under the provisions of the proposed *Building Act*.

Such a regulatory system would provide for practitioners to obtain formal recognition of their skills and experience, and to use that registration as a marketing tool if they wished. It would not prevent an unregistered person from providing building design and contract administration services. In addition a registered practitioner could obtain annual practice certificates to allow it to certify compliance with BCA requirements for appropriate disciplines and building classes. The requirements for a practice certificate would be knowledge and experience in the relevant part of the BCA rather than the level of professional registration. Thus an architect and a building designer practising in the domestic residential market could both have identical practice certificates, even though they may market themselves under different labels.

There are sound grounds to retain and develop the current *Architects Act* to support the registration process required by the *Building Act*. The *Architects Act* can be revised to include tiered registration for certification of building standards, including registration of architectural draftspeople and building designers.

The drafting and enactment process will include review of the proposed legislation for compliance with National Competition Policy. It is likely that the public interest in ensuring buildings are safe for habitation will support the registration of issuers of compliance certificates.

#### **7.4 PROTECTION OF THE TITLE “ARCHITECT”**

Restriction on title is a normal part of professional regulation. It allows a consumer of professional services to know that a person using that title has demonstrated a known level of professional skills. The fundamental meaning of the term “architect” has always been to describe a professional designer of buildings.

There are no economic or logical grounds for debasing the label “architect” to include those who cannot meet the established professional level of skill and experience. It is open to those competing with architects to develop their own brand and market it to consumers. It is clearly in the consumer’s interest to have accurate labels that describe the different levels of skill and experience on offer.

There should be no unreasonable restriction on building designers or the general public using such terms as “architecture” and “architectural” to describe buildings or aspects of building-related services.

## 8 RECOMMENDATIONS

CAMS recommends that the *Architects Act 1921* be retained and developed to meet current and future needs of the building industry in Western Australia and to address the following issues:

### **1. Composition of the Architects Board:**

Reform the composition of the Board to broaden membership with consumer and educational representatives and to align with current practice for regulatory Boards. The Board should have broad representation including industry, professional and consumer interests.

### **2. Registration of Firms and Corporations:**

The detailed provisions for dealing with firms and corporations should be consistent with those of other professions. The preferred model is allow only individuals, not firms or corporations to register. In this case, any person, including firms and corporations would be able to contract for architectural services so long as the work delivered is done under the direct control and supervision of a registered architect with an appropriate practice certificate and signed off accordingly.

Control of corporations and firms should be primarily through the normal operation of Corporations Law. There should be no restrictions on ownership or control of corporations or firms, or on distribution of earnings.

### **3. General Amendment:**

The Act should be generally updated in accordance with the Architects Board and AACA recommendations where these do not conflict with these detailed recommendations.

### **4. Alignment with the new Building Act:**

The *Architects Act* should support the intent and objectives of current building regulation reform—particularly the proposed *Building Act*. Development of the Act should allow for:

- Integration into a unified registration system for building practitioners.
- Effective certification of building standards through restriction of certification to competent building practitioners via the issue of annual practice certificates in respect of BCA disciplines and building classes.
- Continuing professional education.
- Liability reform through requirement for compulsory professional indemnity, public liability, and/or defect liability insurance as appropriate, and limited and proportional liability.
- Legislated registration of appropriate classes of building design practitioners.

### **5. Tiering of Practitioners:**

To support the new *Building Act* the *Architects Act* should eventually incorporate tiered registration of appropriate and competent building design and contract administration practitioners for the purposes of registration to certify compliance with the BCA.

Tiered registration should provide for specific registration and entitlement to use of the appropriate occupational description, for practitioners who meet the requisite skill and experience levels of:

- draftsman
- building designer
- architect

## **6. No Practice Restrictions:**

There should be no restriction on the preparation of building designs and submission of them to the appropriate authority for issue of a building licence. The licensing authority must however be required to obtain certification from appropriately registered building practitioners that the proposed building meets the requirements of the BCA.

## **7. Protection of the title “Architect”:**

Use of the title “architect” should be restricted to those practitioners who have demonstrated their capacity to provide architectural, design and related services at the prescribed professional level. Demonstration of the requisite education, skills and experience required for registration as an architect should be the minimum evidence of attainment of the prescribed professional level.

An accurate labelling system for practitioners should be developed that reflects relative education, skills and experience levels and allows greater recognition of practitioners providing architectural, design and related services at the para and sub professional levels to help minimise consumer confusion. Such a system would be well accommodated by the concept of tiering of practitioners as discussed above.

Building designers or the general public should be able to use such terms as “architecture” and “architectural” to describe buildings or aspects of building-related services, so long as such use does not misleadingly imply that a person is a registered “architect” under the Act.

The definition and appropriate usage of the title “architect” and its derivatives should be clarified in the Act. Clear definitions should also be provided for the occupational titles of “building designer” and “draftsperson”.

## **8. Implementation:**

Regulation of the architectural profession in WA should be developed in step with initiatives for integrated building industry regulation.

Given potential uncertainty in progress of the *Building Act*, CAMS recommends amendment of the existing *Architects Act 1921* in accordance with Recommendations 1-3 in the short term to address known difficulties with the Act and allow effective continuity in regulation of the profession.

Recommendations 4 - 7 directly support the longer term goal of integrated regulation and can be implemented subsequent to further resolution of the overall regulatory framework.



**9.1 APPENDIX 1:**

ERM MITCHELL MCCOTTER NCP  
REVIEW OF THE *ARCHITECTS ACT 1921*