

REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION

SUBMISSION TO PRODUCTIVITY
COMMISSION

BY

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SUBMISSION TO PRODUCTIVITY COMMISSION ON ISSUES PAPER

REVIEW OF LEGISLATION REGULATION THE ARCHITECTURAL
PROFESSION ...NOVEMBER 1999

INTRODUCTION

The Building Designers Association of Australia (BDAA) is aware that the Federal Government intends to review on behalf of various state and territory governments, legislation covering the Architectural Profession. The government has asked the Productivity Commission to report on the preferred option for the regulation of architects. Specifically this is a National Competition Policy review of the Architects Act 1921 and is designed to assist states and territory governments to improve consistency of regulation of architects.

The following is a submission by BDAA, which selectively addresses the Productivity Commission's Issues Paper dated November 1999.

About the BDAA

The Building Designers Association of Australia Ltd is a national body representing 7 independent state and territory Building Designer Associations, specifically BDANSW, BDAV, BDAQ, BDASA, BDAWA, BDANT, BDAT. These associations represent some 1300 professional building designers, specifiers and co-coordinators practicing in a wide range of building activity.

BDAA was incorporated in February 1995, and is managed by an elected Board of Directors, one from each state or territory.

In connection with reviews of state and territory legislation, BDA state associations have previously made submissions to their legislators. Copies of some of these submissions have been forwarded separately. This BDAA paper seeks to place these in a national context.

Paragraph 1.3 - Page 3...Does this inquiry affect you?

Does the inquiry affect you?

Response

BDAA members are practitioners involved in designing projects across the full range of building activity, both residential and non-residential buildings including commercial, industrial or institutional projects. In many cases, they supervise the construction of projects undertaken by them, at their clients' request. From membership surveys and ABS data we

have estimated that BDAA members collectively, are involved in upwards of \$10 billion worth of construction activity throughout Australia over any 12 month period, thereby representing a significant sector.

Only 2 states currently have some form of licensing or regulation covering building designers-Victoria and Queensland.

In Victoria, under the Building Act 1993, building designers and/or draftspersons are required to be registered with the Building Practitioners Board as Building Practitioners under the various classes of Draftspersons. In Queensland members are licensed under the Building Services Act 1991. In both states, building designers are required to comply with the Acts, which includes having the minimum level of Professional Indemnity Insurance.

The BDAA encourages all members in all states to take Professional Indemnity Insurance and participate in professional development. State BDA's conduct structured 'Continuing Professional Development Programmes', comprising industry-specific educational seminars, information nights and general meetings, providing members with numerous opportunities to up skill their knowledge on a wide range of issues.

Paragraph 2.1- Page 5...The market for architects.

Is the Australian Council of Professionals (ACP) definition of professional services appropriate as it applies to architects?

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

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

Response

BDAA submits that while we can find no issue with the quoted definition of 'professional' by the ACP in relation to architects, this approach fosters a 'professional' versus 'non-professional' argument within the market, which does nothing to inform the public regarding relative competencies, and is altogether unhelpful. The professionals versus non-professional, architect versus non-architect arguments are an outdated market description. The market for building design will never be the exclusive domain of architects. It does nothing to ensure the public, employers and regulators view the market through unambiguous nomenclature based on an understanding of the relative skills, knowledge and experience required to perform particular tasks or provide particular service.

A new national regulatory standard should be introduced for all those practitioners in the industry with similar aims and skills.

The market participants defined by the Trade Practices Commission report 'Study of the Professions –Architects' seems to us to correctly reflect market reality and the requirements for more specialists and practitioners with technical underpinning skills.

The following practitioners compete directly with and or at times work together with architects:

- ❑ Architectural Drafters
- ❑ Building Designers
- ❑ Design Engineers
- ❑ Quantity Surveyors
- ❑ Project Managers
- ❑ Builders
- ❑ Interior Designers

Building designers are free to practice across state borders in NSW, SA, WA, Tas and NT. If registered or hold license they can also practice in Qld and Vic. although in the former it is somewhat difficult. This is particularly evident in smaller states and territories where market size imperative becomes important.

Building designers to date have competed in the export market to only a limited extent. This has usually been as part of a larger Business Network or Strategic Alliance.

Paragraph 3.1 - Page 7...Clarifying legislative objectives.

What are the objectives of the Architect's Act in each state and territory?

Are these objectives appropriate? If not, what should they be?

Response

The Royal Australian Institute of Architects contends that the 'public interest' is the only proper justification for continued registration. It argues that the registration process....

"...ensures for the public that persons who calls themselves Architects have been judged to have achieved a professional level of skill and experience in the practice of Architecture".

The title 'architect' is said to represent a benchmark standard. Presumably then operatives with qualifications below this benchmark i.e. (the unregulated areas) ought to represent a quantifiable (or additional risk) to the public. Given no evidence exists to support this or even suggest that non-architects constitute a problem, how is the public interest objective justified? Design is an art, not a science. A qualification of 'Architect' does not automatically confirm any specialist skill.

In the market place Architects no longer have any statutory responsibilities. They have relinquished the responsibility to certify domestic structures, and the task to ensure compliance with building regulations (Standards Association of Australia SAA, Building Code of Australia BCA) now rests with private certifiers, and local government. In addition

specialist project managers now do much of the project supervision architects used to carry out. Since the Act was introduced in 1921, statute codes and a series of technical specialists have resulted in a significant contraction of architect responsibility.

If there is no public interest concern, then the Act should then only have to do with the information nature of the title ‘architect’ - what it means in the public mind. It is impossible to conclude the existence of a significant public risk particularly when by the RAIA’s own figures submitted to the TPC Study of the Professions 1992, architects account for only 37% of all building design projects by number...less in home and non commercial market.

In this TPC study the review paper goes on to quote the Trade Practices Act as follows:

“...in practical terms this means that architects or any other building designers can be prosecuted if they engage in any forms of restrictive trade practice covered by Part IV”.

The current Architect Act does just that – it restricts free trade! While it is accepted that the term ‘architect’ may represent a mark of quality and standard to many in the market place, it is far from clear that this reputation needs to rely on government legislation for its validity.

Paragraph 3.2 - Page 9...Identifying restrictions on competition.

To what extent if any, do registration requirements restrict the supply of architects?

Are all registration requirements necessary to achieve the legislation’s objectives?

What effect does the restriction on the use of the title ‘architect’ have on the supply of architectural and similar services to the Market?

How do these types of restrictions affect the provision of architectural services? For example, could architectural services be provided more efficiently by alternative forms of organizations?

What effect do these restrictions have on innovation within the profession?

Response

We are unable to comment on whether the qualification requirements for architects raise material barriers to entry. However, we again reiterate our concerns regarding the use of the term “architect” and its derivatives. (Refer Response to Paragraph 3.1).

The general public to describe the creator of a unique idea or outcome now commonly uses the title ‘architect’. The term ‘architecture’ has also become commonplace when used to

describe the format or structure of some object or systems; for instance computers are said to have ‘32 bit architecture’ to describe the operating structure.

The term ‘architect’ and in particular its derivatives are now far more commonly used in modern speech and writing than in the 1920’s when the legislation determining their use was enacted. The continued restriction on their use is clearly out of step with modern understanding of the title and it’s associated meaning.

The working drawings of a project are commonly referred to as the ‘architectural drawings’ whether or not an architect has prepared them. Another example is seen in many building supply catalogues, which contain ‘architectural hardware’ and are supported by the supply company’s ‘architectural representative’. These supply elements are also used by all building design professionals, whether or not they are architects.

Constraint on the title ‘architect’ and particularly its derivative ‘architectural’ causes everyday limitations on those professionals in the building design field who compete with architects.

Building designers and other professionals operate in the same markets as architects and compete for market share. (Refer Appendix A for a list of typical services provided by Building Designers)

The term ‘architectural’ is generally used to describe ‘being of art or science of the built form’ and this area of expertise is clearly not limited to architects. The architectural profession tends to reduce debate over this term to what constitutes the art or science of good design and argues that only persons holding appropriate degrees in architecture can be the initiators and arbiters of good design.

The market place has determined that this argument is flawed; and the prevailing attitude of the architectural profession is in many respects the essential reason as to why architects do not maintain a position of influence or market share in the residential sector of the building and construction industry.

Community needs and expectations together with current trends and fashion equally have a role to play in determining what constitutes good design.

In no other professional area is the derivative term restricted in the same way as those governed by the Architects Act. For example, doctors, lawyers, accountants and veterinary surgeons all have titles protected in some way, but the derivative terms of medical, legal, accounting and veterinary are not restricted in use in the same way as is the term ‘architectural’.

An example of a parallel profession in which no constraint of title or derivative exists is the profession of engineer. As with ‘architect’, its modern use is far more general than that of a design of structural or civil works. The community does not seem to suffer any loss through disreputable or unqualified persons holding themselves out to be engineers. Similarly, the

public seems quite able to identify a structural or civil engineer should they require that specific service.

TAFE courses throughout Australia vary in the terminology used to describe building design-related courses. The majority of building designers who prepare building design commences their career by obtaining TAFE qualifications. Using Victoria, NSW & SA as examples here are the most relevant courses:

- ❑ Victoria
 - Diploma or Certificate of Technology – Architectural Drafting.
- ❑ NSW
 - Diploma or Advanced Diploma in Architectural Technology
- ❑ SA
 - Diploma or Certificate in Building Design & Drafting

Similarly university graduates holding Bachelor of Architecture (B. Arch.) who do not meet the requirements of a State Architect Board are also prevented from using the term Architect in marketing.

Under current legislation, building design practitioners are not permitted to use 'architectural services, technology or drafting' when marketing their services. It would be more desirable to have some national uniformity. 'Building Designer' has become the preferred de facto used by practitioners in the face of such legislation. The term is growing in public acceptance and reputation including use by architects. Architects and other professionals are now fostering the term eg. Association of Building Design Professionals whose members may not necessarily design buildings.

The Board of Architects selectively prosecutes infringements of the act related to use of the derivative term 'architectural'.

Free trade is restricted currently where architects lobby Local Councils and Government Departments to insist on the use of registered architects for certain types of work. Architects within State and Federal government departments also restrict access to government work to architects, thus excluding building designers and other designers. This we suspect has a significant impact upon fees charged although we have no quantifiable evidence to support this point. Thus the consumer (in this case the government) is paying more than they should, because of the anti-competitive practices fostered by those in positions of authority.

We have no evidence regarding market failure in 'innovation' in building design. Architects tend to argue that innovative design is the sole province of a university qualification. This is of course a nonsense argument, to which many examples of good design will testify. We assume this is an argument used to justify current government imprimatur of the Architects Act.

Experience across several industries suggests while undoubtedly innovation does benefit from tertiary institutional involvement, of equal importance has been the commercialization

process undertaken to bring the concept to the market. There is a primary requirement for a wider range of intermediaries to be involved in innovation commercialisation. Government regulation as such has been shown to play only a small role in the process.

Paragraph 3.3 - Page 11...Legislation and the public interest.

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

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

Is there other consumer protection legislation (e.g. the Trade Practices Act 1974(Part v) and Fair Trading Acts), which provides the same protection as the Architects Act? What are the advantages and disadvantages of each?

Are there significant additional guarantee of competence and quality that purchasers receive from using the services of an architect registered under an Architects Act, which are not received from a member of the RAlA?

If yes, please elaborate. If not, from a consumer protection perspective; what is the advantage of the Architects Act?

What is the most efficient and effective way of addressing information problems? Could information problems be resolved by enhancing the information provisions activities of the RAlA?

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

Response

This submission contends there are difficulties in the market place regarding provision of information concerning architectural services. Currently, the public when seeking to employ design professionals will make inquiry as to the level of service provided by the practitioner and request previous examples of works together with references and any other form of testimonials. In this manner, potential clients choose the expertise which best suits their needs and expectations. Often the question of architect or non-architect is irrelevant.

Choosing an architect because they are qualified as an architect or have the sole right to the term architect and its derivatives is not an automatic guarantee as to the quality of service provided. This statement equally applies to any other profession or vocation.

There is also evidence of market failure based on misleading listings in the telephone directory. For example the BDAA and Building Designers in NSW have generally promoted the use of the term 'Building Designer' in order to differentiate themselves from 'architects' and clear up any confusion in the minds of the public. However, many architects have in recent years listed in the Yellow Pages under the heading 'Building Designers' (including Archicentre (Aust) Pty Ltd), the home advisory division of the Royal Australian Institute of Architects), presumably hoping to cash in on the reputation Building Designers have with the public.

Further the Acts' 66 per cent minimum 'architect' ownership requirements also make information comparisons for the consumer difficult. Providers of architectural services, whether or not principals number 30, 50, 60 or 100 per cent with qualifications as 'architect', will focus their marketing strategy on the company's design skill and excellence in the provision of a total product. The addition of one or more fully qualified architects does not necessarily guarantee better performance for a consumer.

In today's design environment, architectural and building designer practices are highly diversified with specialist people performing different tasks. Practices now seek to combine these various talents to produce an end product. Full architectural qualifications of all directors are often irrelevant to the quality of product and, correspondingly, the protection of a consumer's interest is not dependent upon this form of security. Many qualified architects now work with other design related practitioners to produce a quality product.

The detriment to the community is the fact that the client may not appreciate the skills or alternatives that are readily available, because of the inference or the propaganda that the product produced by a non-architect is inferior.

The Architects Act has created confusion in the minds of some members of the public regarding the term 'architect'. Many people believe that architects design all buildings, whereas, in fact, architects design less than 40% of buildings.

The very existence of the Architects Act infers that an architect is the only person who is allowed by law to provide those services and that others (non-architects) are operating illegally. The question remains, why should the Architects Act continue to remain on the statute books when it so clearly no longer represents today's market place and so clearly adds confusion to the information process?

Consumer protection could be enhanced by compulsory use of Professional Indemnity Insurance. Currently, it is compulsory in Victoria and Queensland as well as in some categories of BDANSW and BDANT membership. It is not compulsory for architects...why?

The Productivity Commission's Issues paper discusses market interference and failure. The Architects Act is a clear example where government legislation contributes to market failure in consumer information. Areas where this type of legislative intervention is generally regarded as being in the public interest include environmental protection, food safety,

occupational health and safety and provision of welfare support. Clearly, the Architects Act falls into none of these categories.

The Building Code of Australia, Australian Standards and enforcement of the use of qualified structural engineers and building certifiers cover the public safety issue by local government. Local government also administers environmental protection. The BDAA submits that there is no case to restrict the use of any derivatives of the term architect.

Given the existence of modern consumer protection legislation, the Trade Practices Act 1974 and state equivalents e.g. NSW Fair Trading Act 1987, there appears to be no point in duplicating legislation in an Architects Act 1921 based purely on protection of the consumer.

Both Acts prohibit persons making false statements and engaging in misleading conduct. Thus they prohibit anyone providing a design service and simultaneously representing him or herself as having a degree in architecture if they do not.

The Architects Act in seeking to protect the consumer by restricting use of the term architect is flawed. This more recent consumer legislation provides superior due process in that it reviews all the issues involved in alleged offence, not just misuse of the term architect.

Paragraph 3.5- Page 15...Future Regulation?

We are asked to comment on a series of alternatives to the existing state based government regulations concerning the Architects Act.

The BDAA favors retention of a significantly modified 'Architects Act' for informational purposes only and where use of the term 'Architect' is protected only in such a way as to enable overseas recognition of Australian Architects.

All other existing restricted trade clauses currently affecting building design practitioners should be repealed in the interests of consumer information and the greater public benefit. In particular it should be made unlawful to restrict building designers from tendering for work for which they have proven capability and skills.

Use of derivative terms 'architectural services', 'architectural design' and 'architectural drafting' should be unrestricted for building designers holding the appropriate competencies.

BDAA believes there should be a nationally recognized registration regime for Building Design Practitioners quite separate from Architect registration. These would be based on a clear and transparent set of competency standards. These new standards would provide unambiguous nomenclature, which describes in a holistic way the competencies involved in building design.

The Victorian Building Practitioners Board scheme appears to us to be the closest existing preferred model.

Architects would then presumably continue to be registered in the existing way by the established Architects Boards. Building designers registration assessment would be by a separate and independent Building Practitioners Board.

For Building Designers this process would foster a greater propensity for development of self-regulatory codes of practice. BDAA believes such registration should ensure all building designers undertake compulsory professional development through an approved association. It should also mandate that building documentation has an authorship certification by a registered building designer as well as evidence of current professional indemnity insurance.

SERVICES PROVIDED BY BUILDING DESIGNERS

Building Designers provide a professional, value for money service to clients. Building design requirements can be varied and extensive or, in some cases, quite straightforward. To enable a **clearer understanding** of the various services, this summary **attempts to identify the relevant scope** of works.

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| <p>a) Preliminary Design Consultation
May include a detailed project briefing in the Building designer's Office, or at the client's office/home to assess client's needs and provide advice on various options including discussion of possible future plans, resale, etc. Preliminary layout sketches may be produced, and/or indicative budget prepared. The intent of this briefing is to assess available options so a valued judgement can be made for further detailed development.</p> <p>b) Site Feature Survey (this is not a Licensed Survey)
Carry out feature and levels survey of the building site including noting of features such as fences, large trees, drainage, pits, adjacent properties, views local features etc. Should boundary definition not be apparent a 're-establishment survey' may be required to re-peg the true site boundaries (if required, this needs to be carried out by a Licensed Surveyor at extra cost). In some cases a Licensed Survey is a mandatory requirement of Council.</p> <p>c) Detailed Site Measure and Preparations
Relates to existing buildings requiring alterations or additions and involves documenting the state of existing works prior to any alterations or additions.</p> <p>d) Feasibility Study
In some cases Designers may prepare feasibility studies for proposed projects involving analysis of design options, scope of works, and likely costs based on historical data.</p> <p>e) Preliminary Design Development
This role incorporates co-ordinating a design brief from the client and preparing preliminary concept sketches suitable for subsequent detailed development. Often included at this time is an assessment of options designed to analyse various benefits, long term aims or budget considerations. Where required, discussions with neighbours or other interested parties may be relevant.</p> <p>f) Town Planning Drawings
Where required by Council, after approval of concept design, the preparation of presentation drawings for Town Planning purposes. To describe for Town Planning purposes the scope of works and relevant visible finishes and site conditions.</p> <p>g) Town Planning Submissions to Council and Carrying Out Required Advertising Where Necessary
Where required by Council, lodge the relevant application forms, plans and/or letter of explanation as may be necessary. Upon request by Council, erect site signs,</p> | <p>Carry out Registered Mail distribution and any other activities necessary to complete the statutory advertising requirements (if not carried out by the Council).</p> <p>h) Design Development
An advanced stage of (d) where a design concept may be reviewed, modified, and developed to finally refine a concept to include the best available features.</p> <p>i) Working Drawings
The preparation of working drawings to define basic structural aspects and many requirements of finish deemed to comply with provisions of the Building Code of Australia. Provide details of all doors, windows, roof construction, dimensions, and site works. Also detail specific connections or construction techniques.</p> <p>j) Internal Details – Amenities/Wet Areas
The preparation of detailed drawings of layout, elevations, finishes, etc showing built-in cupboards, fittings, extent of wall-tiling, wall mirrors, etc for all 'wet areas' (ie. kitchen, bathroom, laundry, etc). The intention is that these drawings can be given to relevant trades to assist with costing estimates and to clarify details of finish. In many cases accessories, power points and lighting can be located.</p> <p>k) Electrical Plan
Liaison with clients to produce a comprehensive layout plan of lighting and power points incorporating requirements for switching, dimmer switches, security lighting, general and/or purpose lightning, etc.</p> <p>l) Project Specification and Schedule of Finishes
A descriptive specification providing a defined basis for builders to prepare their fixed price quotation. For some projects a "Bank Specification" is prepared which describes the standard of workmanship and includes details of fittings, finishes and materials to be used.</p> <p>m) Call Tenders, Liaise with Owners and Builders, Attend Contract Signing
After completion of Tender Documents to call Tenders from select or nominated builders. Then to help identify and/or rationalise any quotation variations in addition to generally advising on matters arising.</p> <p>n) Lodge Building Permits and Liaise with Building Surveyors
Prepare application forms, co-ordinate all relevant documents and lodge with the selected Building Surveyor. In some cases, liaison with the Building Surveyor will be required prior to Working Drawings.</p> | <p>p) Site Attendance and Contract Administration</p> <ul style="list-style-type: none"> ▪ To attend site on a regular basis to monitor progress and advise/interpret for the builder and/or owner as required. ▪ To monitor the job to obtain appropriate finishes consistent with the design concept, client's brief and fair and reasonable trade practice. ▪ To carry out Contract Administration ie record variations, progress claims, etc, and advise on the validity of these claims. <p>Note: The role does not include responsibility for quality control. In all cases the builder is responsible for adherence to the contract documents, adherence to relevant building regulations and maintenance of quality controls. The Building Designer's involvement is accepted in an advisory capacity only.</p> <p>q) Drainage Design
May be included on some projects. Alternatively a Civil Engineer may be engaged.</p> <p>r) Engagement of Consultants
Some projects require engagement of external consultants to carry out specialist works on behalf of the client, eg Structural Engineer, Civil Engineer, Landscape Designer, Interior Designer, Surveyor, Town Planner, etc. Client's authority should be obtained prior to instructing such consultants.</p> <p>s) Contractual Advice
Assist in preparation of the contract documents. It is recommended that a legal opinion from a qualified legal practitioner be obtained by the all parties prior to signing any contract documents.</p> <p>t) Assessment of Compliance Reports
Building Designers assist with the assessment of the numerous compliance reports often required today by regulatory authorities such as the OHSA, Planning Departments, AAT, CFA-MFB, SEC, Gas & Fuel etc. They also obtain reports/schedules demonstrating their compliance with the various regulations and codes affecting the building and construction industry.</p> <p>u) Artistic/Graphic Presentation
Many Building Designers have skills or capacities to offer artistic representations of the project. This particularly helpful for marketing purposes, and in assisting to visualise the project concept in three-dimensional means (eg perspectives, 3D CAD images, walk-through's, fly-overs, etc).</p> |
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