Architects Branch, APESMA

Submission

Review of Legislation Regulating the Architectural Profession – Draft Report, May 2000

About the Architects Branch of APESMA

The Association of Professional Engineers, Scientists and Managers Australia (APESMA) is a national industrial organisation which represents employees and independent contractors across the professions.

The Architects Branch of APESMA was formed through the amalgamation of the Architects Association of Australia (AAA) and APESMA in 1995. The Architects Branch specifically covers registered architects, students and graduates of architecture.

Previous Submission

The Architects Branch of APESMA made a submission to this Review in December of 1999. This submission is numbered 68 in the Draft Report and appears under APESMA. The two Submissions should be read in conjunction.

Response to the Draft Report

In its assessment of appropriate regulation of architects, the Commission is required to take into account two overarching principles:

a) legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches; and

b) the need to promote consistency between regulatory regimes and avoid unnecessary duplication.

Issues raised by these principles in the context of the Draft Report are addressed below.

Does the Legislation Restrict Competition?

Principle a) is concerned with "legislation which restricts competition". However, the Commission itself states that anyone may compete with architects, and that practice is not restricted (p. XIV).

The restriction that the current state and territory Architects Acts impose is on the usage of the term 'architect' and 'architectural', rather than on any work undertaken. This restriction simply reflects the qualifications, experience and competencies of architects as against other professions.

It is our contention that the state and territory Architects Acts do not fall within the definition of "legislation which restricts competition." Therefore, government competition policy, and the above principles do not properly apply in the examination of the application of the Architects Acts.

The Commission argues that current arrangements have fostered an inward-looking attitude amongst architects, encouraging them to rely on a legislated monopoly over use of title to protect them from competition (p. XXXV). This assertion is inconsistent with the finding of the Commission that, if protection from competition by legislated use of title was their (architect's) strategy, "it clearly has not worked " (p. 147).

The Report also finds, that "the anti-competitive effects of these restrictions are limited" (p. XXIV), and that anyone may compete with architects as practice is not restricted (p. XIV).

The fact that architects are not protected from competition is demonstrated by the fact that architects perform between 5-25% share of work in the residential market (p. XX). In addition, the fact that non-architecturally qualified persons are free to compete with architects is evidenced by the fierce fee bidding that exists for all professional building consultancy services.

Do Benefits Outweigh Costs?

Principle a) also requires that the benefits to the community as a whole should outweigh the costs if such legislation is to be retained.

The Commission concedes that the costs imposed on the community by the Architects Acts do not appear to be large (p. XXIX).

The Commission asserts, however, that the overwhelming weakness of certification is that it does little to address the shortcomings in the market for building design and related services that it purports to correct, and that these shortcomings are better targeted by fair trading, building and planning laws. On this basis, the Commission finds that the costs of the legislation outweigh the benefits and that the net public benefits are negative (p. XXIX).

In coming to this conclusion, the Commission has attempted to redefine the purpose of the Architects Acts as focused solely on narrow consumer protection issues in the

area of "building controls, fair trading laws and general contract law" (p. XXV). Under principle a), however, the Commission must assess whether "the benefits to the community as a whole" are outweighed by the costs.

The objectives of the Architects Acts as advanced by the RAIA are far broader and include protection and enhancement of the public's economic, social, cultural and environmental interests. Such objectives clearly extend beyond the narrow issues that can be addressed through legal means under building, fair trading or contract law. This narrow interpretation of the objectives of the Architects Acts demonstrate a lack of understanding of architectural processes, and of the benefits of registration as raising standards of architectural services generally.

Can the Objectives of the Legislation be Achieved More Efficiently?

The Commission refers to amendments that could be made to the Architects Acts to reduce any anti-competitive costs associated with the current system of regulation. These amendments include a single national system for the registration of architects.

Despite the tangible efficiency benefits of the suggested amendments, these changes are not considered as a legitimate alternative. The improvements offered by the suggested amendments are cast aside in reaching a recommendation for the repeal of the Architects Acts.

The Commission recommends an unknown system of self-regulation ahead of measurable improvements to an existing system. It is our view that advocating the introduction of a self-regulation model with unknown outcomes above an improved existing system is irresponsible.

A system of self-regulation has inherent problems. It is unlikely that professional bodies can properly address breaches of ethical standards and professional conduct. Professional bodies are directly reliant on funding from their membership for their survival, and face an overwhelming conflict of interest as a result.

The Commission has therefore failed to demonstrate that the objectives of the legislation could be more efficiently achieved by self-regulation.

Need for Consistency and Unnecessary Duplication

The Commission acknowledges that it is impossible to predict how the profession might respond to the repeal of the Architects Acts (p. 146). There can be no guarantee therefore that a model of self-regulation would provide for consistency or avoid unnecessary duplication.

The Commission also suggests that competition between self-regulatory regimes is a positive benefit of the self-regulation model (p. 146). This suggestion is clearly contrary to principle b), which requires consistency between regulatory regimes and the avoidance of unnecessary duplication.

The Terms 'Architect' and 'Architectural'

It is the view of the Architects Branch that architects have invested considerable time, effort, and expense in education and practical experience to qualify as an 'architect'. We do not believe that other practitioners will avoid using the term 'architect', contrary to the assurances of the Commission (p. XXXIII).

We do not agree with the Commission that other service providers are 'substitutable' for architects. We believe that this view is analogous to arguing that individuals who provide conveyancing services are substitutable for lawyers. It is our contention that architects possess a unique synthesis of skills, and that this fact is reflected by the choice of engagement of architects for specific projects.

The educational qualifications in architecture are based on a 5 year full time university course with work experience leading to the award of a bachelor degree, followed by a further 2 years supervised in service training prior to registration as an architect. The practitioners who are deemed to be 'substitutable' by the Commission include Draftspersons who are required to complete a 2 year TAFE Diploma and 12 months work experience. Clearly these courses and the mandatory practical experience requirements are not 'substitutable', and nor are their graduates.

Export Issues

The Commission recognises that demand for accreditation by overseas governments and purchasers of Australian architectural and education services are important issues in this debate.

The Architects Branch disagrees with the conclusion of the Commission that such requirements could be met by voluntary mechanisms targeted to the export sector (p. 146). It is a contradiction that such mechanisms should be viewed as important for overseas purchasers but not necessary for domestic consumers.

Further, it is the view of the Architects Branch that scrapping the existing legislative regime would only lead to confusion amongst overseas customers, putting demand for such export services at risk. A far better approach would be to improve the existing legislative framework, with which overseas customers are already familiar.

Conclusion

It is our view that the Draft Report does not meet the requirements of Competition Policy principles a) & b).

The existing legislation, by the Commission's own admission, does not restrict competition in terms of practice. It is our view that it has not been adequately shown that costs of the existing framework outweigh the benefits. The conclusions put are largely based on opinion, not fact.

The obvious option of improving the existing legislation has been cast aside in favour of self-regulation with no evidence that this model would be more efficient.

Further, the requirement of the need to promote consistency between regulatory regimes and to avoid unnecessary duplication is not met by the recommendations.

It is the view of the Architects Branch that the appropriate way forward is not to repeal the Architects Acts, but to improve public awareness of Architect's services, qualifications and unique synthesis of skills. To support these initiatives, the existing regulatory framework should be made more transparent and strengthened.

The failure of the Commission to seriously consider an improved legislative framework as an appropriate option is a glaring omission of the Draft Report. The Commission has instead opted for an ideologically-driven self-regulation approach, which ultimately advocates change for changes' sake.

Reference:

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

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