THE BUILDERS REGISTRATION BOARD OF WESTERN AUSTRALIA

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Tony Hilton
Productivity Commission
PO Box 80
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Dear Mr. Hilton

MUTUAL RECOGNITION REVIEW

Thank you for the opportunity to make a submission to the review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Review (TTMRR).

The Builders' Registration Board of Western Australia seeks to help building professionals, consumers and clients of building professionals to maintain quality and building standards within the local and wider community. The Mission of the Board is to obtain the highest possible standards in the building industry, by the maintenance of appropriate levels of entry skills for builders, the fostering of continuous professional development and the provision of cost efficient and impartial service to the community.

The Board currently has 4862 trading builders on its register with 75 of those registered under mutual recognition. The Board received 10 applications under this category during the previous financial year.

The Builders' Registration Board appreciates the opportunity to contribute to the review and attaches comments (see attachment A). Please note that as Western Australia is not a party to the TTMRR, the Boards' comments has been limited to the MRA only.

Yours faithfully



Nigel Lilley
REGISTRAR

ATTACHMENT A

The Builders' Registration Board of Western Australia wishes to raise the following issues with respect to the *Mutual Recognition (Western Australia) Act 2001* (the Act) referred to thereafter as the MRA.

Lack of uniformity of standards for registration across jurisdictions

The Board is concerned with its obligations under the Act to grant registration to persons who may not otherwise satisfy the Western Australian requirements. The lack of uniformity of standards to become a registered builder across jurisdictions is of great concern to the Board as it can lead to applicants "shopping around" and gain registration in a State in which they do not intend to practise.

There has been at least one instance where an applicant failed the Boards' Assessment Papers to become a registered builder in Western Australia and consequently went to another State and achieved registration there. They then returned to Western Australia and, although having been refused registration earlier, the Board was obliged to grant registration under mutual recognition.

The lack of uniformity of standards is a fundamental problem and these inconsistencies have the potential to erode the quality and standard of the building industry in Western Australia. The Board is utmost concerned that it is forced to accept an applicant's registration without flexibility - even if the Board believes that the applicant does not hold appropriate qualifications or resources.

Lack of uniformity of legislation across jurisdictions

Every jurisdiction in Australia has different legislation governing their building industry and there is a need for some uniformity in order for the principle of mutual recognition to deliver successful outcomes.

Of particular concern are the definitions of terms used in describing restrictions in registrations. In some instances, the meaning of what appears to be a straight forward restriction on a registration becomes enormously complex because of the way in which the legislation is written. This is particularly the case with restrictions on registration.

For example, the wording of Victoria's legislation is extremely difficult to apply and this results in Western Australia not being able to place the same restriction on a builders' registration as it is in the first State.

Entitlement to registration

The MRA provides that once a person in registered under the principle of mutual recognition in the second State, the entitlement to registration continues whether or not registration ceases in the first State.

This is at odds with the consumer protection role that builders' registration law is designed to address. The Board considers that if a person looses their registration in any State, it should automatically cancel their registration in all States.

The MRA does provide that if a persons' registration is cancelled or suspended on disciplinary grounds, or as a result of or in anticipation of civil or disciplinary proceedings, then the persons'

registration in another State is affected in the same way. However, this does not prevent the first State reinstating any cancelled or suspended registration and that person returning to Western Australia to once again apply under MRA for registration.

Mutual recognition attempts to create a unified market when the building industry is in fact a segmented market, which can create adverse impacts. For example, if a builder is deregistered in the first State on grounds of fraudulent conduct, then that builder should face deregistration in all States and not be permitted to carry on trading in other States. The Board considers that if a builder accepts the advantages that mutual recognition can provide, then they must accept the disadvantages of mutual control.

Interim Arrangements

Under MRA an applicant is entitled to carry out their occupation pending granting or refusal of registration. The Board has one month from receiving an application to make a decision to grant, postpone or refuse registration, essentially permitting the applicant to carry out building work during this short, albeit potentially significant period. One month may nevertheless have an impact in the building industry and it would seem more consistent to also require the applicant to wait one month until they have heard from the Board.

Notification to local registration authority

At present the status of an applicant is required to be obtained from the first State only. The Board considers that the MRA should require that the status of an applicant be obtained from all jurisdictions.

Further, the MRA provides for a written notice to be provided to the registering body about an applicant to state that they are not the subject of disciplinary proceedings. However, disciplinary proceedings may not occur for a long period of time after a complaint is received or an investigation is proceeded.

The Board therefore considers this, amongst other things, to be insufficient in determining the application and considers that it should include whether the person is also the subject of a complaint in any jurisdiction.

Lack of coordination and cooperation Disciplinary action

There appears to be a lack of coordination and cooperation across jurisdictions when it comes to disciplinary action. There is no reliable means that provides for the notifying and recording of information regarding disciplinary action between the States. At the very least it should be a requirement under MRA that the first and second (or third etc) State must report to all other States when a registration is cancelled and on what grounds.