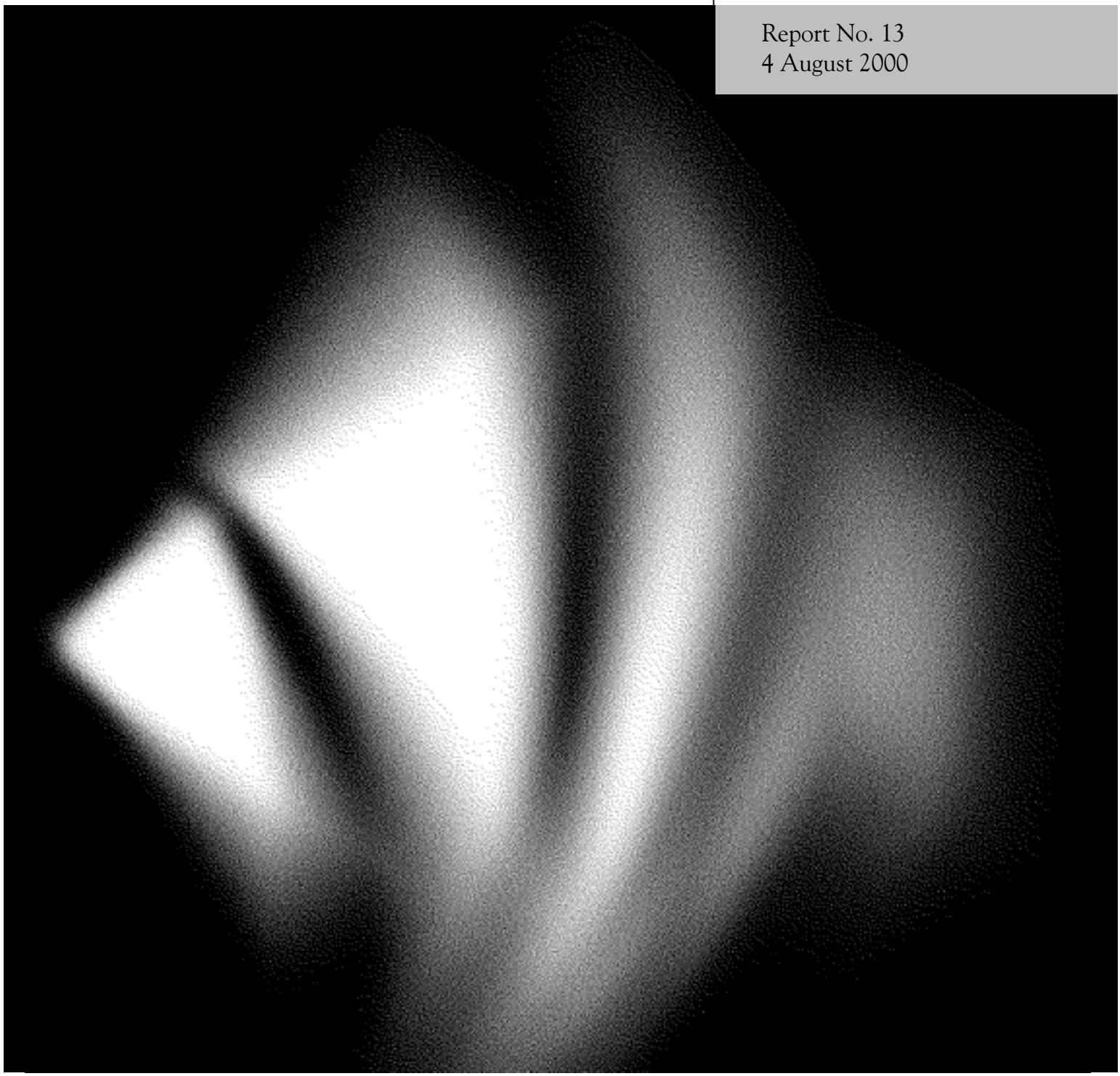
PRODUCTIVITY COMMISSION

Review of Legislation Regulating the Architectural Profession

Inquiry Report

Report No. 13
4 August 2000



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The Productivity Commission

The Productivity Commission, an independent Commonwealth agency, is the Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.

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4 August 2000

The Honourable Rod Kemp MP
Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Dear Assistant Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's final report on the Review of Legislation Regulating the Architectural Profession.

Yours sincerely

Professor Judith Sloan
Presiding Commissioner

Dr Neil Byron
Commissioner

Terms of reference

On behalf of the governments of the Northern Territory, the Australian Capital Territory, Tasmania, Western Australia, South Australia, Queensland and New South Wales, I ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998* refer the attached list of legislation and associated regulations, relating to the architectural profession, to the Commission for inquiry and report. A final report is required within nine months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. The purpose of the inquiry is to:

(a) achieve greater consistency in any future regulation of the architectural profession in Australia; and

(b) assist State and Territory governments in meeting their legislation review obligations under the *Competition Principles Agreement*, in relation to legislation that regulates the architectural profession.

Scope of Inquiry

3. The Commission is to report on the preferred option for regulation, if any, of the architectural profession in Australia, taking into account the following 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.

4. In making assessments in relation to the matters in paragraph 3, the Commission is to have regard to the following matters, where relevant:

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

(b) any recent or current State/Territory legislation reviews of the architects profession, including those in Victoria, South Australia, Western Australia and the Northern Territory;

(c) the Council of Australian Governments' *Guidelines for the Review of Professional Regulation*, February 1999; and

(d) other legislation which impacts specifically upon the activities of architects.

5. The Commission's report will:

(a) identify any differences between the legislation in each jurisdiction;

(b) identify any public interest rationale for the legislation;

(c) clarify the objectives of the legislation and, given the rationale identified in (b), their continuing appropriateness in each jurisdiction;

(d) identify potential restrictions on competition arising under the legislation;

(e) identify relevant alternatives to the legislation, including non-legislative approaches, and the extent to which these would achieve the objectives identified in (c);

(f) analyse the likely effect of any identified restriction on competition on the economy generally;

(g) assess and balance the costs and benefits of the restrictions identified — benefits, costs and impacts of the restrictions, and their alternatives, are to be quantified wherever practical;

(h) in assessing costs and benefits in (g), consideration is to be given to the long term social, cultural and economic impacts of architectural services;

(i) identify the different groups likely to be affected by the legislation and the alternatives identified in (e);

(j) list the individuals and groups consulted during the review and outline their views; and

(k) determine a preferred option for regulation, if any, in light of the principles set out in paragraph 3.

Consultation and Government Response

6. In undertaking this inquiry, the Commission is to advertise nationally, consult with key interest groups and affected parties and make a draft report available to the public during the inquiry. The Government intends to release the Commission's final report promptly.

7. State and Territory governments have agreed to consider the Commission's report and respond within six months of it being made public.

ROD KEMP
5 November 1999

Legislative Instruments to be Reviewed

The relevant instruments relating to the architectural profession for States and Territories that are to be reviewed are as follows:

- Northern Territory — *Architects Act 1963*
- Australian Capital Territory — *Architects Act 1959*
- Tasmania — *Architects Act 1929* and *Architects Regulations 1997*
- Western Australia — Architects *Act 1921* and the *Architects Board of Western Australia by-laws 1965*
- South Australia — *Architects Act 1939* and the by-laws made under that Act
- Queensland — *Architects Act 1985* and the *Architect Regulation 1985*
- New South Wales — *Architects Act 1921* and the *Architects (Elections and Appointments) Regulation 1995* and the *Architects (General) Regulation 1995*

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Abbreviations

AACA	Architects Accreditation Council of Australia
ABS	Australian Bureau of Statistics
ACEA	Association of Consulting Engineers Australia
AERB	Architects Education and Registration Board (New Zealand)
AILA	Australian Institute of Landscape Architects
APE	Architectural Practice Examination
APESMA	Association of Professional Engineers, Scientists and Managers, Australia
ARCUK	Architects Registration Council of the United Kingdom
BDAA	Building Designers Association of Australia
BOOT	Build Own Operate and Transfer
BPBV	Building Practitioners Board of Victoria
BSA Act	*Queensland Building Services Authority Act 1991*
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CPD	Continuing Professional Development
D&C	Design and Construct
DFAT	Department of Foreign Affairs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IAC	Industries Assistance Commission
IC	Industry Commission
IEAust	Institution of Engineers, Australia
MFAT	Ministry of Foreign Affairs and Trade (New Zealand)
NCP	National Competition Policy

NOOSR	National Office of Overseas Skills Recognition
NPrA	National Program of Assessment
PC	Productivity Commission
pers. comm.	personal communication
PFI	Private Finance Initiative
PII	Professional Indemnity Insurance
RAIA	Royal Australian Institute of Architects
RAPI	Royal Australian Planning Institute
RLA	Registered Landscape Architect
RRU	Regulation Review Unit (Victoria)
sub.	submission
TPA	*Trade Practices Act 1974*
TPC	Trade Practices Commission
trans.	transcript
TTMRA	*Trans Tasman Mutual Recognition Arrangement 1996*
UIA	International Union of Architects
WTO	World Trade Organization

Explanations

Recommendations

RECOMMENDATION

Recommendations in the body of the report are highlighted using bold italics with a heading and sidelined, as this is.

Findings

FINDING

Findings in the body of the report are highlighted using italics with a heading, as this is.

Key messages

- Currently each State and Territory restricts use of the title 'architect' to persons who meet certain requirements (a statutory certification system). The Commission was required, under National Competition Policy guidelines, to assess whether the current system of regulation serves the community interest and whether better, more efficient, mechanisms exist.
- Building and planning codes and fair trading laws directly address community standards relating to building safety, propriety of building service providers, 'truth in labelling' and the quality of the built environment. Statutory certification of architects also aims to address some of these issues.
- Statutory certification appears to do very little to promote *additional* community benefits. Certification of architects is an imprecise and indirect instrument for addressing various health and safety issues related to buildings and concerns about the quality of the built environment.
- For example, in the residential and smaller commercial sectors of the market, many consumers choose to hire non-architects and, even if hired, architects may not have primary responsibility for building health and safety. Consequently, many consumers are not protected by Architects Acts.
- Statutory certification restricts competition to some degree, imposing costs on consumers, architects and non-architects. As the *practice* of architecture is not restricted by Architects Acts, such costs are unlikely to be large. Nonetheless, evidence suggests they are positive.
- Perhaps the strongest argument for Architects Acts is that statutory certification and course accreditation may facilitate Australian exports of architectural and education services. However, targeted mechanisms to meet export requirements could be devised without the attendant costs of statutory certification.

(Continued next page)

Key messages (continued)

- On balance, in the Commission's assessment, the costs of current regulation outweigh its benefits because claimed benefits of Architects Acts could be achieved more effectively by a self-regulating profession and other existing legislation.
- While there is no case for extending current regulation (for example, by restricting practice), Architects Acts could be improved by establishing a national system of registration, winding back title restrictions, removing restrictions on the use of derivatives and ownership of practices, and promoting transparency and accountability of Architects Boards.
- An even better alternative — which is the Commission's preferred option — would be to repeal Architects Acts and remove statutory certification. In the absence of Architects Acts, architects are likely to develop a credible system of certification (as have several other professions) to promote their qualifications and competence to domestic and overseas consumers. Self-regulation is also more likely to promote a national registration system than is a statutory system which requires harmonisation by all States and Territories.
- Some States and Territories have adopted, or propose to adopt, comprehensive legislation requiring all building practitioners (including building design practitioners) who act as principals, to be registered. Though not the Commission's preferred option for regulating architects, the Commission has set out principles for incorporating architects in this model.

Overview

This inquiry is about the regulation of architects in Australia. Currently each State and Territory generally allows only persons who have completed an approved tertiary course, have at least two years' experience, have passed a practice examination administered by an Architects Board and who adhere to standards of professional conduct, to call themselves an 'architect' and describe the services they provide as 'architecture'. However, with some exceptions, all States and Territories allow anyone to compete with architects; practice (that is, provision of services) is not restricted. The Commission's task is to assess whether current legislation — which is best described as statutory professional certification — promotes the community interest or whether feasible alternatives could do better.

This inquiry is about appropriate regulation of architects in Australia.

Public participation in this inquiry was encouraged. The Commission held more than forty informal discussions with organisations, companies, academic institutions and individuals, and Architects Boards in all States and Territories. Just under 500 written submissions were received in response to the issues paper and draft report. Public hearings were held in five States.

Public participation in this inquiry was encouraged.

Background to the inquiry

The inquiry stems from an agreement between Commonwealth, State and Territory Governments to implement a National Competition Policy (NCP) reform package. As part of this package, all Governments agreed to review and, where appropriate, amend or repeal — by the end of 2000 — all legislation that restricts competition (Competition Principles Agreement (CPA), clause 5).

The inquiry stems from the National Competition Policy legislative review program …

… and is being conducted by the Commission on behalf of all States and Territories (except Victoria).

The Commonwealth Government, on behalf of all States and Territories (except Victoria which has completed its review), has asked the Productivity Commission to conduct a national review of legislation regulating architects, with the dual purposes of assisting State and Territory Governments to meet their obligations under the CPA and to achieve 'greater consistency in any future regulation of the architectural profession in Australia'.

The purposes of the inquiry are to determine which form of regulation (if any) will promote community net benefits as well as promote consistency.

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.

The first principle mirrors the guiding principle of the CPA. The second is of particular relevance to this inquiry because currently each State and Territory regulates its architectural profession separately and slightly differently.

State and Territory Architects Acts

Everyday use of the word architect refers to a designer of buildings, ships etc.

According to the Australian Concise Oxford Dictionary (1992), an architect 'is a designer who prepares plans for buildings, ships etc., and supervises their construction'. Other dictionaries contain similar definitions. In other words, common usage defines the word architect in terms of the work an architect typically performs.

Architects Acts restrict use of the title architect and its derivatives to persons who meet certain requirements …

Architects Acts — introduced in NSW, Victoria, Western Australia, Queensland and Tasmania in the 1920s, South Australia in 1939 and the ACT and Northern Territory in 1959 and 1963, respectively — subtly alter this definition. They restrict use of the title architect (and its derivatives such as architectural) to persons deemed to have appropriate qualifications and experience and who comply with standards of professional conduct.

However, apart from restrictions contained in some other legislation (for example, in Queensland, buildings above a height of 25 metres must be designed by architects), any services provided by architects may be performed by 'non-architects' (including building designers, builders, project managers, engineers, town planners and draftspersons) — they just cannot designate it as architecture or architecturally designed. In short, the various Architects Acts restrict the use of language, but not practice.

… but do not prevent anyone from providing essentially the same services as architects.

Throughout this report, unless otherwise stated, the word architect refers to a person registered under an Architects Act and any derivatives refer to the activity of an architect. Consequently, the use of language in this report is consistent with current regulation.

Any reference to an architect in this report implies a 'registered' architect.

In each jurisdiction, the Architects Board, established under the Architects Act, is responsible for registering and disciplining architects. In all jurisdictions, architects comprise a majority of Board members. Only Victoria has a requirement for consumer representation.

Architects Boards, comprising mainly architects, are responsible for enforcing the Acts.

The Boards determine criteria for registration within broad legislative requirements — that the applicant has completed an approved tertiary qualification in architecture, has at least two years' recognised practical experience and has passed an examination set by the Board. Persons who do not have approved tertiary qualifications also may apply for registration provided they can demonstrate certain competencies (and have at least seven years' relevant experience).

To be registered, architects normally must complete an approved tertiary course, have at least 2 years' experience, pass an examination set by the Board …

There are no ongoing requirements for maintenance of registration except adherence to certain standards of behaviour, and payment of a small (usually less than $100) annual fee to the relevant Board.

… and pay a small annual fee.

Other common legislative provisions, designed to support restrictions on use of title and to maintain standards of professional conduct, include:

Other provisions include …

… penalties for breaches of prescribed standards of conduct and …

- disciplinary provisions for breaches of prohibited actions which include: 'supplanting' (that is, 'poaching' another architect's client); receiving a financial benefit from a contractor, supplier or tradesperson; and offering inducements to prospective clients. Investigations typically are instigated and conducted by the Boards themselves, though some jurisdictions provide for independent investigations and some allow consumers to bring charges of professional misconduct against architects. The range of penalties includes deregistration, suspension, small fines and reprimands; and

… majority architect ownership of companies and partnerships.

- requirements in most jurisdictions for majority (commonly two-thirds) ownership by architects of partnerships and incorporated businesses wishing to use the title architect and its derivatives.

Architects and the market for building design and related services

There are around 8600 practising architects in Australia …

The Commission has found it difficult to obtain accurate data about the number of *practising* architects in each State and Territory. The best estimate is that there are currently about 8600 practising architects in Australia, of whom about half are members of the Royal Australian Institute of Architects (RAIA), the national professional association.

… with about 80% in NSW, Victoria and Queensland.

Roughly one-third of practising architects reside in NSW, more than a quarter in Victoria, and almost 20 per cent in Queensland. Of the remaining 20 per cent, about half reside in Western Australia, and about a third in South Australia. About 420 practising architects in total reside in Tasmania, the ACT and the Northern Territory.

Data are difficult to obtain but …

Industry and official data relating to architects generally are difficult to obtain, but it appears that:

- the current annual market value of design and related services (including services provided by architects and non-architects) is around $800 million;

- average remuneration of architects does not appear high relative to other comparable professions — a median base salary of about $54 000 according to one survey. However, according to the same survey, 16 per cent of architects earned more than $100 000; and

… average incomes do not appear high relative to comparable professions.

- about one-third of architects operate as sole practitioners, and about the same proportion work as partners or directors of small practices. About one-quarter are salaried employees, mostly in the private sector.

Most architects work in sole or small practices.

Defining the market in which architects compete

Architects provide a range of services relating to building design and construction: design, site analysis, planning applications, contract documentation and administration, and project management. Of these, the design function is most typically associated with architects.

Architects provide a range of services in addition to their design function …

Several other occupations, referred to collectively here as 'non-architects', also provide some, or all, of these services. These include building designers, architectural draftspersons, landscape architects, civil and construction engineers, quantity surveyors, urban and town planners, project managers and builders. It is estimated that there are approximately 4500 to 5000 'non-architect' building design practitioners in Australia directly competing with architects in the provision of building design services. Some providers in this category have degrees in architecture. Many others outside this group compete in other aspects of service — project management, for example.

… and compete with other providers in all aspects of their service.

While acknowledging that they compete with non-architects, many architects who participated in the inquiry argued that they provide a superior, comprehensive service as a direct consequence of their training and professionalism. This view did not go unchallenged by non-architect participants, however. Though doubtless there will be variations in provider quality, and though non-architects are not permitted to label or market any of their services as 'architectural' services, the evidence suggests that many consumers in the residential and commercial sectors regard particular services

While architects argue they provide a superior service, other service providers are broadly substitutable.

provided by non-architects as closely substitutable for those provided by architects.

Thus architects compete in the building design and related services market …

Thus, for the purposes of this inquiry, the relevant market in which architects compete can be described as the market for building design and related services. However, the types of services provided and the extent of competition differ across market sectors.

… though the extent and intensity of competition varies across sectors.

Architects, for instance, are responsible for only a small share (estimates suggest less than 5 per cent) of design of new residences (which are predominantly standard design, project homes), and increasingly, even for large commercial projects, they face competition from specialist project managers and non-architect designers. For reasons discussed below, competition from non-architects appears to be less intense for public sector projects.

Principles for assessing regulation of architects

In assessing current Architects Acts and alternative approaches, the Commission has been guided by the terms of reference, the *Productivity Commission Act 1998*, regulation review principles developed by the Commonwealth Government and the CPA itself.

Good regulation should …

All these sources require that regulation should be kept to a minimum and place the onus of proof on those who argue for restrictions. Core criteria include that regulation:

… enhance community welfare, broadly defined …

- is justified only where *community* welfare is enhanced. To evaluate the community-wide impact, the Commission must weigh up possible positive and negative effects on consumers of architectural services, architects and their competitors, and third parties who may at some time be affected by the regulation. As well as their economic impact, the Commission must consider the long-term social and cultural impacts of current regulation and feasible alternatives;

- should minimise adverse effects on competition; and
- where applied, should be transparent, flexible, open to scrutiny and regular review, and minimise administrative and compliance costs.

… minimise adverse effects on competition and be transparent, subject to review, and efficient.

Reasons for regulating architects

Most participants in this inquiry (predominantly architects, architectural companies, architects' associations and Architects Boards) argue that regulation of title and associated registration requirements promote the public interest by:

- ensuring that comparatively uninformed consumers do not inadvertently hire non-architects;
- promoting Australia's exports of architectural services and education; and
- imposing minimum training requirements and rules of conduct, thus raising the average quality of architects which, in turn, generates benefits for consumers and the wider community, including improving the quality of the built environment and Australia's cultural legacy.

Architect participants argue that Architects Acts protect consumers, promote exports and generate wider community benefits.

While the underlying principle of the CPA is that competition generally promotes the best outcomes, there are circumstances when markets may not generate optimal outcomes, and government intervention may be justified to promote the public interest.

Competition may not always deliver the best outcomes …

Two possible grounds for intervention of relevance to this inquiry are: 'spillover' effects (because building design and construction affect the wider community in both the short and long run); and asymmetric information (the consumer has less information than the provider of building design services).

… due to, for example, spillover effects and poor information.

Markets sometimes generate their own solutions to these problems in order to promote potentially beneficial transactions (through provider reputation, warranties etc).

Markets themselves sometimes remedy these problems …

… and government intervention generates its own costs. Intervention is justified only when it can do better than the market.

Government intervention, however, may be able to improve on market outcomes. For example, governments may provide better information more efficiently or, where the potential for harm is great, restrict consumers' choice to certain providers. Such intervention can, however, create its own inefficiencies and/or have anti-competitive effects. Therefore, whether and how governments should intervene depends on whether the benefits of intervention outweigh the costs.

Information problems in the market for building design and related services

When hiring an architect or other building designer, consumers are likely to have less information than the 'expert' …

Information problems that consumers may face in the market for building design and related services are typical of the information deficiencies found in markets for services where the provider also acts as adviser and agent. That is, consumers may know broadly what they want when seeking a provider of building design services; for example, a house renovation. However, they may not know how it should be done or who is best qualified to provide it. In addition, it may be difficult for consumers to identify faults until a long time after work has been completed and, indeed, other parties (for example, subsequent owners) may bear these costs.

… though some consumers, through repeat purchases, may not be at a disadvantage.

The degree of information asymmetry in this market is likely to differ according to the type of consumer. Consumers in the commercial and government sectors are more likely to be frequent users of the services and have the resources and knowledge to research and evaluate the merits of building design providers. Inexperienced and uninformed consumers are likely to be more prevalent in the residential and lower-value commercial sectors of the market. Consumers in overseas markets also may lack information about Australian providers.

Even the relatively small group of individual consumers who directly hire providers of building design and related services in the residential sector are likely to have the time and incentive, given the size and importance of the purchase, to investigate the capabilities and credentials of potential service providers. In particular, the reputation of providers is likely to play an important role. Service providers 'inform' consumers by developing and advertising their reputation, possibly bolstered by membership of a professional association which itself establishes a reputation and credible certification procedures.

Infrequent consumers are likely to spend time and money searching for a suitable provider, helped by information provided by the market.

However, though the market may operate effectively for many transactions, in some cases, the potential harm generated by occasional inadvertent selection by a consumer of an incompetent or unethical provider may be considered unacceptably high by the community. For a number of reasons, this may warrant intervention of some form.

Nonetheless, the consequences of a poor choice may be considered too high by the community …

First, structural and other building defects can cause catastrophic damage and injury and, in extreme cases, even death. More generally, they are likely to require expensive repairs. Even if such occurrences in an unregulated market were likely to be infrequent, the community may not be prepared to tolerate even a low level of risk.

… especially in relation to building safety …

Second, the purchase of building design and related services usually involves a relatively large financial investment. Any significant delays or cost overruns in construction can have serious financial ramifications for consumers.

… and potential financial losses.

Finally, the costs of poor design aesthetics and functionality may also be significant for consumers, both financially (if adjustments need to be made after initial construction, for example) and in non-financial terms (living with an 'imperfect' design). However, information problems in relation to these aspects of design are likely to be less severe. While consumers may find it difficult to assess the quality of construction, they usually know what they like in design and will search for a provider whose design style suits their tastes and needs. Nonetheless, it is feasible that regulation could improve the availability and quality of information about the

Poor aesthetics and functionality also may cause harm, but it is not likely to be catastrophic and is less likely to occur because consumers generally know what they like.

technical competence of designers, and thus reduce consumer risks still further.

How well do Architects Acts protect consumers?

Architects Acts aim to impose standards for architects to protect and inform consumers.

By imposing minimum qualifications and professional conduct requirements on architects, the current system of certification aims to impose standards for architectural services, providing protection for consumers against incompetence and impropriety and, at the same time, providing information to consumers, reducing their search costs and helping them to make better choices.

But Architects Acts appear to provide poor protection because consumers may choose non-architects …

However, the ability of the various Architects Acts to provide adequate *consumer protection* against incompetence and impropriety appears weak because:

- a majority of consumers in the residential sector choose not to hire architects and, even when hired, architects may not have primary responsibility for building health and safety;

… one-off registration requirements may not ensure current competency, and …

- the link between one-off registration requirements for architects and their practical knowledge of, and expertise in, current construction and design techniques is indirect; and

… disciplinary provisions lack transparency and independent enforcement.

- the extent to which provisions in the Acts promote ethical and sound commercial behaviour depends to a large extent on appropriate enforcement of these provisions by Architects Boards. But evidence suggests that few consumers know about or use complaints procedures (many more, it appears, use avenues provided by fair trading laws). Grounds for complaint appear to be somewhat limited (in some jurisdictions, incompetence and negligence are not explicitly mentioned) and there is no formal provision for redress. Architect domination of the Boards and a general lack of procedural transparency, at the very least, contribute to a perception that legislation may not serve the interests of consumers.

Provisions of the Architects Acts also may generate some *information* regarding qualifications and competence of architects to consumers who are aware of the certification system. But many participants agreed that one-off registration of architects provides minimal, generic information to these consumers.

Architects Acts also may provide some minimal, generic information to consumers …

As mentioned above, given the highly customised nature of the design service, and the large expenditures usually involved, most consumers are likely to engage in extensive search to find a building design provider who suits their particular requirements. In this case, it is unlikely that registration provides much additional useful information, or provides information more efficiently, than would be provided in a competitive market through provider reputation or certification through membership of a credible professional association, or by a third party.

… but it is unlikely that this eliminates consumers' need to search further, or reduces their search costs significantly.

Though Architects Acts may provide limited information to some customers who are aware of the Acts, and some protection to those who use architects, the benefits of current legislation must be assessed relative to outcomes which would be achieved in their absence. A range of legislation and regulation (including fair trading and building laws and planning processes) is in place which is more directly and comprehensively targeted at consumer protection concerns.

Consumer protection afforded by Architects Acts is somewhat hit-and-miss and inferior to existing targeted regulation …

Moreover, removal of *statutory* certification of architects is unlikely to mean an absence of certification of architects (because architects, like engineers, accountants and many other professions, are likely to develop mechanisms for signalling their quality to consumers). Indeed, a self-regulating profession, subject to competition, is likely to have a very strong incentive to uphold standards.

… while credible certification of architects is likely without legislative backing.

Do Architects Acts facilitate exports?

Exports of architectural services were valued at around $13 million in 1998-99 (about 1.5 per cent of the total value of architectural services). Though small, it is argued that exports are becoming increasingly important for some architectural practices. Furthermore, in 1998, there were

Exports of education and architectural services are small but important for some providers.

about 1000 overseas students studying architecture in Australia.

Foreign buyers of architectural and education services may also require information and reassurance …

Foreign consumers and potential architecture students may find it difficult to obtain information about Australian architects and architecture courses. Some architects argued that statutory registration under Architects Acts was a prerequisite for exporting to many countries. On the other hand, some larger architectural practices indicated that reputation, rather than registration, was of paramount importance in obtaining work overseas. Several academics argued that foreign students demand official accreditation of tertiary courses.

… and many countries impose requirements on foreign architects …

The Commission understands that many countries impose a variety of requirements on foreign architects (including Australians) if they are to practise in their markets. These include that foreign architects be registered and, in some cases, work in partnership with a local practice. Whether these requirements are designed to protect consumers or to act as barriers to trade is unclear.

… but this does not necessarily require statutory certification or protection of title in the Australian market.

At any rate, it does not follow that Architects Acts and title restrictions must be imposed in the Australian market to facilitate exports — costs on the domestic economy must be weighed against the benefits derived from promoting exports, as well as other benefits. Moreover, as demonstrated in other professions, demands for certification and accreditation by overseas consumers, students and governments should not require *statutory* certification of Australian architects. It is feasible to devise non-statutory, targeted mechanisms which certify that exports, exporters and university courses have met standards acceptable to overseas customers and which do not impose anti-competitive restrictions in the domestic market. Implementing such change could, however, incur some short-term transitional costs.

How well do Architects Acts address spillovers?

Building design and construction can have broad and significant ramifications for the wider community. It is unlikely that a consumer building a house or office block will fully take into account such external effects when selecting the design (though neighbours might attempt to exert some influence). Because non-regulatory solutions are less likely to develop, the profession considers that significant spillovers in this market provide grounds for intervention.

Building design and construction has wide-ranging effects on the community and the built environment.

Specifically, by ensuring that architects have a degree and some experience, it is argued that statutory certification benefits the broader community in terms of the quality of the built environment, cultural heritage, health and safety, and ecologically sustainable development.

By ensuring qualifications of architects it is argued that the community will benefit.

As discussed above, Architects Acts are not the most direct way to address health and safety concerns. This is because consumers may choose other providers and because, even if hired, architects may not have primary responsibility for such matters. A more direct approach is to set and enforce health and safety standards for buildings which must be met by all potential service providers.

But Architects Acts do not directly address health and safety concerns.

In relation to the quality of the built environment, it is not clear that architects' views (often divergent) of what is appropriate in terms of design, culture and resource use, reflect the views and interests of the wider community. (The Circular Quay development in Sydney provides one recent example.) At any rate, many consumers choose not to hire an architect or may not accept the architect's advice.

Nor do Architects Acts effectively address the quality of the built environment …

Because of the inherent problems associated with defining 'good design' or 'culture', regulatory intervention more appropriately focuses on achieving a delicate balance between competing community interests via, for example, planning and heritage laws and zoning.

… which is better addressed by planning laws which balance community interests.

Costs of Architects Acts

Anti-competitive effects of Architects Acts are limited because unregistered providers can provide similar services …

Because restrictions on use of the title architect and its derivatives do not prevent other (uncertified) providers from competing in the market, the anti-competitive effects of these restrictions are limited, but still exist. Essentially, any anti-competitive effects caused by these restrictions on the use of certain words and phrases relate to the extent to which they are at odds with their everyday use.

… but consumers' choice may be distorted by restricted use of language.

There are likely to be some consumers who, because of restrictions in the Architects Acts, are unaware of the services of non-architect providers of design services. Thus their choice of designer under current regulations may be somewhat distorted. While building designers and others advertise the services they provide, this process itself may incur additional costs because of title restrictions. Moreover, while many building designers who have participated in this inquiry suggest that they are not constrained by their inability to use the title architect, they do claim that their ability to advertise their services is constrained significantly by being unable to describe their work as architectural design.

Quantification is not feasible, though evidence suggests that …

It is very difficult to quantify the magnitude of these effects. One symptom of restrictions on competition would be relatively high architects' fees, reflecting barriers to being an architect. But it is difficult to find evidence of this (except perhaps in some areas of government procurement where non-architects are effectively excluded from tendering). Some architects earn high fees but this may reflect the value placed on their individual abilities, or that they offer a more comprehensive service. On average, however, architects' incomes do not appear to be high relative to comparable professions.

… costs are not large but they are positive.

On the whole, in the Commission's assessment, the anti-competitive costs of restrictions on the use of the title architect and its derivatives do not appear to be large but, nonetheless, evidence provided by non-architects suggests that they are positive.

More significant anti-competitive effects arise from the interaction of the certification system and other regulations and buying practices. As already noted, in Queensland, the design of buildings over 25 metres in height is reserved for architects. And throughout Australia, at all levels of government, buyers of design services have tended to consider and use only architects (either as in-house providers or, more commonly, as external contractors). Though this may simply reflect consumer preference, non-architects often are excluded from bidding for projects of a type they perform regularly for private clients. While such restrictions on competition (which benefit architects at the expense of consumers and non-architects) are not solely attributable to Architects Acts, restriction of the generic title architect has facilitated them.

More significant effects on competition arise from the linkage between Architects Acts and other regulations and government buying practices …

Evidence presented by several companies suggests that restrictions on ownership of architectural practices appear to have inhibited efficient and innovative provision of services by many architects (in terms of company structure and the mix of services offered) and reduced their ability to compete against non-architects who do not face such constraints. Reliance on protection of title to maintain market share may also have reduced the incentive for innovation by architects.

… while other restrictions on ownership of architectural practices largely have hurt architects.

Separate and somewhat different State and Territory registration requirements for individuals and companies also have generated unnecessary costs for architects, such as multiple registration, which may have impeded interstate trade. Although administrative costs of the current Boards are low, these costs are probably higher than they need to be because of duplication of functions across States and Territories. However, alternative forms of certification (statutory or non-statutory) also would generate administrative costs.

Inconsistency and duplication have added to the costs of current regulation and have impeded competition.

Net benefits of Architects Acts

In short, while the costs of Architects Acts appear low, the problem is that they provide even fewer benefits.

The gross costs imposed on the community by the Architects Acts do not appear to be large but the community benefits appear to be even smaller. Indeed, in the Commission's assessment, the benefits appear to be negligible because current Architects Acts, which certify one group of providers, provide very poor consumer protection and minimal consumer information, and are inadequate instruments for dealing with spillovers in the market for building design and related services. Shortcomings in this market generally are being, or could be, more directly and comprehensively targeted by other forms of regulation including building, planning and fair trading laws.

In the Commission's assessment, the costs of current Architects Acts (under review) outweigh the benefits, and therefore net community benefits are negative.

Alternative approaches to regulating architects

Improvements and alternatives to current Architects Acts have been considered.

The terms of reference require the Commission to assess feasible alternatives to current legislation, including non-legislative approaches. Alternatives considered include: reservation of practice; co-regulation; improvements to Architects Acts including the Architects Accreditation Council of Australia (AACA) National Legislative Guidelines; incorporation of architects in general building practitioners registration regimes; and self-regulation.

Reservation of practice

Restrictions on the practice of architecture might ensure comprehensive regulation, but the costs are likely to outweigh any benefits significantly.

Some participants argued that the benefits of regulation would be improved if certification were replaced by a system of licensing, that is, a system that further restricted competition by reserving design work — at least for some projects — for architects.

In the Commission's assessment, there is no public interest justification for excluding non-architects from any sector of the market for building design and related services. In particular, reservation of practice would not address concerns

about the quality of the built environment efficiently or effectively. At the same time, costs could be increased significantly — consumers' choice of building design practitioner would be restricted unnecessarily and architects' fees could be expected to rise.

Co-regulation

Co-regulation as proposed by the RAIA is unlikely to generate better outcomes.

The RAIA's preferred regulatory approach, where the RAIA is given a legislated monopoly over certification of architects, in the Commission's view, is likely to produce outcomes no better than, and possibly inferior to, current arrangements. This is because, as with Architects Boards, an effective monopoly over use of the title architect would mean that anti-competitive effects of title restrictions would remain, and there would be no additional incentive for the RAIA to promote consumer interests. While other co-regulation models could be devised which promoted consumer benefits and competition, similar improvements could be made to the current Architects Board model.

AACA National Legislative Guidelines and other improvements to Architects Acts

Implementation of AACA Guidelines on the whole would be an improvement, but they do not go far enough.

The AACA National Legislative Guidelines, endorsed by all Architects Boards in 1992, propose some improvements to current Architects Acts aimed at: enhancing their consumer focus (including requiring one board member to represent consumers and clarifying grounds for complaint); removing minimum ownership requirements and supplanting restrictions; developing a national model for registration; and confining restrictions on use of title and derivatives to those involved in the building sector.

Other amendments to improve the benefit-cost balance include …

In the Commission's view, though many of the AACA's proposed changes would improve current regulation, the Guidelines do not go far enough. Other changes to increase benefits and reduce costs include:

… majority lay representation on boards; more independent and transparent registration, complaints and disciplinary procedures;

- majority lay representation on boards; provision of more information to the public about complaints procedures; independent appeals and disciplinary procedures; and public reporting of complaints outcomes;
- more transparent registration procedures (for example, by providing for the 'blind' assessment of (transcribed) oral and written examinations);

… contestable certification;

- the introduction of contestable certification (in the sense of allowing persons with a variety of qualifications and experience to register as architects), either by allowing other bodies to compete with the Boards as certification agencies, or by introducing new channels for registration within the current structure;

… removal of restrictions on derivatives;

- removal of restrictions on the use of derivatives of the word architect by non-architects, thus allowing them to label their services as architectural; and/or

… and/or introduction of a two-tier model that frees up the generic title and derivatives.

- narrowing of title restrictions so that they refer to 'registered architects' (or a similar title), thus freeing up use of the title architect and derivatives (subject to misleading and deceptive conduct provisions of the Trade Practices Act (TPA) and complementary State and Territory legislation).

Architects as building practitioners

Architects could be incorporated within broader building practitioners legislation …

Victoria and Queensland have in place comprehensive building practitioners legislation (incorporating elements of a Model Building Act agreed to in the early 1990s) which requires all practitioners who act as contract principals to be registered. Tasmania has introduced legislation similar to Victoria's but, as at August 2000, it has not been passed. The Commission has some concerns about the operation of this legislation in some jurisdictions — especially the Queensland Building Services Authority Act which restricts the practice of architecture and building design. Moreover, even where the model has been implemented, architects have continued to be registered under separate Architects Acts.

A review of the Victorian Architects Act has recommended repeal of that Act and incorporation of architects within the Victorian Building Act.

… as suggested in Victoria.

This proposal has some attractive features. Though it would involve continued government registration and accreditation and some restriction of the title architect in certain contexts, it would remove many of the costs of the current Architects Acts (for example, use of derivatives effectively would be freed up), and would promote a consumer focus. It also explicitly recognises that architects are a part of the building industry.

This model has some attractive features, provided …

In the Commission's view, in those States and Territories which require all building practitioners who act as principals, including building designers and architects, to be registered, adoption of the following principles would be desirable:

… certain principles are applied, including:

- architects (and building designers) should be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);

  … boards have wide membership;

- only principals (persons, not companies) to contracts should be required to register;

  … only principals are registered;

- the practice of architecture and building design should not be restricted;

  … no restriction of practice;

- that use of a title such as 'registered architect' be reserved for those registered but that there be no restrictions on use of the generic title 'architect' and its derivatives;

  … the title architect and its derivatives are not restricted;

- provision of accessible, transparent and independently administered consumer complaints mechanisms, and transparent and independent disciplinary procedures; and

- there should be scope for contestable certification of architects (that is, that the Boards accept for registration as architects persons with a variety of qualifications and experience provided they are competent). Criteria could be determined in consultation with the RAIA and other potential private certification bodies.

  … and there is scope for contestable certification.

Application of these principles would limit anti-competitive effects and promote consumer protection objectives.

Self-regulation

If Architects Acts were repealed, architects must still comply with a range of other legislation designed to protect consumers and the community.

Self-regulation would involve the repeal of Architects Acts but, importantly, this would not leave the profession and the services it provides unregulated. Architects and other providers of building design services are subject to a range of regulations designed to address consumer protection and spillovers related to the building industry, and the business community in general. In many cases, these general laws were not in place when Architects Acts were first introduced.

Moreover, certification of architects would continue, with standards maintained by the profession.

In addition, the profession would be likely to develop its own certification system to signal standards and competence to consumers. Where appropriate, many of the current requirements for registration are likely to be maintained as membership requirements of a professional association. The RAIA, which currently represents about 50 per cent of all practising architects, is likely to emerge as *one* private certification body. The RAIA already has in place various categories of membership according to qualifications and experience, a code of conduct, disciplinary provisions, and provides services such as professional development and professional indemnity insurance.

Professional associations would have a strong incentive to maintain standards and credibility …

Voluntary membership and potential competition from rival professional bodies (or independent certification agencies) would give a self-regulatory body a strong incentive to protect its credibility and the reputation of its membership by encouraging appropriate qualifications and high professional standards and taking disciplinary action against those who do not uphold those standards. By ensuring the credibility of its certification system, and therefore providing reliable information about the quality of its members to consumers, a self-regulatory body can promote the public interest.

… as occurs in many other professions.

Several other professions in Australia are not protected by legislation, and provide a guide as to what could happen.

Box 1 **Self-regulation of other professions in Australia**

Accountants

The accounting profession is largely self-regulating, with a number of professional bodies. Some of these have broad membership while others cater for specialised fields of activity, with different educational requirements for entry. There is no restriction on the title 'accountant', but membership of a professional body allows some differentiation (for example, 'certified practising accountant').

Engineers

The engineering profession is self-regulating in States and Territories other than Queensland. The Institution of Engineers, Australia (IEAust) administers a competency-based registration scheme for engineers, a professional development program, a code of conduct, complaints and disciplinary procedures, and accredits courses.

The National Professional Engineers Register is a national, voluntary database of professional engineers. Registration requires competency assessment, substantial current employment, continuing professional development and practice in accordance with the code of ethics. The register is administered by the IEAust, and its members (and non-members) may apply for registration.

Town and regional planners

The Royal Australian Planning Institute (RAPI) is the national professional association for town and regional planners. Requirements for corporate membership are completion of an accredited planning course and at least two years' practical experience. Provision also is made for applicants who do not have a recognised planning qualification. Members are required to undertake continuing professional development and abide by a code of conduct. RAPI maintains a non-statutory National Register of Planning Consultants, operates complaints and disciplinary procedures, accredits planning courses and educates the public about the role of the profession.

National register of architects

Self-regulation may be more likely to promote national registration.

Most participants to this inquiry have argued in favour of a national registration scheme for architects. In the Commission's view, self-regulation is more likely to achieve national consistency than statutory certification. National legislation is unlikely (given that the States are unlikely to refer powers to the Commonwealth), while even harmonised legislation may prove difficult to implement. (The AACA National Legislative Guidelines, agreed to in 1992, have not yet been implemented.)

The profession could establish a national register. Tertiary courses could be accredited by professional associations.

The profession could establish a voluntary national register of persons who have met certain qualifications or standards. One model would be the voluntary register established by engineers (box 1). Foreign and domestic buyers (including governments) could also use this list as a screening device as could those State and Territory Governments that require registration of building practitioners. Tertiary courses could be accredited by professional associations or independent accreditation bodies as occurs in other professions.

Self-regulation would promote competition and professional standards which would serve community interests.

In the Commission's view, self-regulation would eliminate the anti-competitive costs of title restrictions, while competitive pressures are likely to promote credible private accreditation and certification which imparts more information to consumers than the generic label architect. In other words, professional standards and competence are unlikely to decline and would probably improve given stronger incentives to maintain professional standards of members of an association.

While architects may be concerned that membership fees may rise, they would join associations only if they delivered net benefits.

It is unlikely that repeal of all architects legislation would require significant additional financial outlays by architects. It is possible that professional association membership fees would increase in line with an expansion in the scope of their activities. But as membership is voluntary, fees could not exceed the benefits of membership. Removal of current registration fees would at least partly offset increased membership fees. While there may be some other additional expenditure for individual architectural practices, such as increased advertising of their services, architects will only incur these outlays if they bring net benefits.

The Commission's preferred approach

Current regulation could be improved, but it would still not be good regulation.

Several amendments (outlined above) could improve current Architects Acts by reducing impediments to competition and promoting transparency and accountability of Architects Boards. In particular, introduction of a two-tier system which freed up use of the generic title 'architect' (and its derivatives), and applied statutory certification only to a title such as 'registered architect', would promote competition.

However, the Commission questions the need for *statutory* certification of architects because, even if improvements were introduced, the regulation would continue to provide:

- negligible additional consumer protection and community benefits compared with general building and planning laws, fair trading laws etc. In most jurisdictions, these general laws have subsumed any role that Architects Acts may once have played; and
- virtually no protection or information for consumers over and above that which is, or could be, provided credibly and efficiently by a self-regulating profession.

Other laws directly and comprehensively target community concerns; self-regulation would provide credible information to consumers.

Under NCP guidelines, the onus is on those who would retain regulation which restricts competition to demonstrate that the benefits to the community outweigh the costs, and that the objectives of the regulation cannot be met more efficiently by other (including non-legislative) means. Statutory certification of architects does not meet this test.

Statutory certification of architects does not meet the NCP test for good regulation.

The Commission's preferred option for regulation of the architectural profession is repeal of Architects Acts, and their replacement, as the profession sees fit, by a system of voluntary self-regulation (subject, of course, to the TPA). Self-regulation would eliminate the costs of title restrictions, and competitive pressures are also likely to promote credible accreditation and certification by the profession which imparts more information to consumers about architects' competence and qualifications than statutory certification.

The Commission's preferred option for regulation of the architectural profession is repeal of Architects Acts.

The Commission considers that repeal of Architects Acts would not create hardship for architects or consumers. Some participants assert that consumers would be confused by other practitioners calling themselves architects or offering architectural services.

This is unlikely to impose hardship on consumers or architects.

Most consumers of architectural services do not appear to rely on generic labelling provided by current certification, and undertake extensive search to find an architect (or non-architect) who suits their particular tastes and requirements. Moreover, any potential confusion could be reduced by allowing a notification period of, say, two years, prior to the legislation being repealed.

Most consumers undertake extensive search and changes could be announced two years in advance.

It is unlikely that many will adopt the title architect, but use of derivatives is likely to increase.

However, evidence from several non-architects who are members of professional design associations suggests that they are unlikely to adopt the title architect. It is more likely that, of those who newly adopted the title, many would be graduates of accredited architecture courses who have remained unregistered. (Those who use the title would be subject to the general consumer protection ('truth in labelling') provisions of the TPA and complementary State and Territory legislation.) While many non-architects would appear more likely to describe their work as architectural, the Commission considers that this freer use of the language would assist the information process, not detract from it.

There may be some transitional difficulties with respect to exports …

Though the Commission can see no reason why a credible non-statutory system of certification and accreditation could not be developed that would meet the needs of overseas consumers, the Commission acknowledges that some transitional difficulties could arise with respect to exports, especially exports of architectural education. This may require the profession and universities to consult with foreign governments and develop alternative certification mechanisms for exports.

… but these are not insurmountable.

The Commission does not regard this as an insurmountable hurdle. Other professionals including engineers and accountants export successfully and negotiate mutual recognition agreements on the basis of non-statutory certification and accreditation. In particular, the Commission does not consider that Australia should implement regulation in its domestic economy solely in order to meet the approval of governments and architects overseas, as a prerequisite for exporting. If such barriers to trade exist in this profession, the appropriate response would be for the Australian Government to seek their removal in the relevant international fora.

On balance, self-regulation would generate net benefits for the community, including many architects.

The Commission therefore considers that, on balance, self-regulation would generate net benefits for the community, including many architects. An appropriate notification period, of say two years, would allow domestic and overseas consumers to be informed of and consulted about changes. Self-regulation also is more likely to promote a national

certification system (even if some jurisdictions do not repeal their legislation).

The Commission also recognises that some States and Territories have implemented or propose to implement legislation which provides for registration of all building practitioners (including all building design practitioners) who act as contract principals. While not its preferred option for regulating architects, the Commission has spelled out guiding principles if architects are incorporated within this framework.

Though not its preferred model, principles for including architects in State and Territory Building Acts are also spelled out.

Recommendation and findings

Recommendation

State and Territory Architects Acts (under review) should be repealed after an appropriate (two-year) notification period to allow the profession to develop a national, non-statutory certification and course accreditation system which meets requirements of Australian and overseas clients.

In those States and Territories which require all building practitioners who act as principals (including all building design practitioners) to be registered, the following principles should be adopted with respect to architects:

- ***that architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);***
- ***that there be no restrictions on the practice of building design and architecture;***
- ***that use of a title such as 'registered architect' be restricted to those registered but that there be no restrictions on use of the generic title 'architect' and its derivatives;***
- ***that only principals (persons, not companies) to contracts be required to be registered;***
- ***that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures; and***
- ***that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration).***

Findings

This section draws together all findings contained in this report. Findings are listed under the relevant chapter.

Chapter 3 Architects and the market for building design and related services

FINDING 3.1

Evidence suggests that many consumers regard particular services provided by non-architects as closely substitutable with those provided by architects. The relevant market in which architects compete is the market for building design and related services.

Chapter 4 The case for regulation

FINDING 4.1

Information deficiencies exist in the market for building design and related services, particularly for individual consumers who purchase these services infrequently. Although various mechanisms operate to correct many of these deficiencies, in some aspects of the provision of building design and related services, including its financial and commercial, design aesthetics and functionality, and especially health and safety aspects, the market and general legal remedies alone may not sufficiently address community standards. Government intervention in some form therefore may be justified, provided the benefits of such intervention can be demonstrated to outweigh the costs.

FINDING 4.2

Spillovers in the market for building design and related services may be significant. Non-regulatory responses may be limited because it may be difficult to conduct negotiations among affected parties. This suggests that government intervention in some form may be warranted, particularly in relation to the quality and sustainability of the built environment and other social objectives, including health and safety. However, it is vital that any intervention enhances community well-being. This generally requires that the intervention target the spillover as directly as possible.

Chapter 5 Current Architects Acts: benefits

FINDING 5.1

The ability of the current Architects Acts (under review) to protect consumers by ensuring quality standards in the areas where the potential for harm is significant (financial and commercial, and health and safety risks), is limited because:

- *consumers choose to hire non-architects;*
- *certification focuses on one group of providers — architects — who may not have the prime responsibility for those areas which could cause harm;*
- *one-off registration may not ensure that all architects possess current knowledge and competence in these areas that may generate harm; and*
- *public awareness of the complaints and disciplinary provisions appears to be poor, and the general lack of procedural transparency and inadequate remedies for consumers may not promote consumer protection.*

Building codes target more directly potential harm from unsafe construction (regardless of provider). Fair trading laws provide alternative avenues for consumer complaints and redress, and prohibit misleading and deceptive conduct on the part of service providers.

Information problems in relation to the aesthetics and functionality of design are likely to be less severe — consumers usually will search for a provider whose design style suits their tastes and needs. Moreover, the ability of Architects Acts to protect consumers from poor design is limited because there is no objective test of what constitutes good design.

FINDING 5.2

The current Architects Acts (under review) may provide a screening device for some consumers who are aware of the system and the extent of the information it provides. Other consumers, who do not fully understand the provisions of the Acts and the function of the Boards, may mistakenly believe that the system provides a government guarantee of service quality, and consequently reduce their search. Although statutory certification can provide information, it is not clear that this necessarily is more efficient or more credible than certification provided by professional associations and other bodies, especially where the latter are subject to effective competition. Service providers and associations also are subject to general fair trading laws that prohibit misleading and deceptive conduct or the making of false or misleading representations.

FINDING 5.3

The current Architects Acts (under review) are a blunt instrument for addressing spillovers because:

- *the provisions apply to one group of providers, who may not be responsible for those aspects of the service which could generate spillovers;*
- *regulating architects does not target spillover problems, such as the quality of the built environment and community health and safety, at their source; and*
- *there is no feasible objective measure of what constitutes an acceptable outcome for spillovers relating to building design.*

In most cases, alternative regulations are in place to address various spillovers, including planning processes that address community concerns relating to the quality of the built environment. These approaches target concerns more directly and comprehensively than certification of architects.

Chapter 6 Current Architects Acts: facilitating exports

FINDING 6.1

A number of considerations, including statutory accreditation of architecture courses, encourages overseas students to study architecture in Australia. However, non-statutory accreditation, as occurs in other professions, could be established as a credible alternative.

FINDING 6.2

A certification system may be a necessary (but certainly not sufficient) requirement to enable some exporters of architectural services, particularly sole practitioners and small practices without an established reputation and contacts in other countries, to compete overseas successfully.

Non-statutory certification, as occurs in other professions, could be established as a credible alternative to statutory certification.

FINDING 6.3

If other countries are intent on maintaining barriers to trade in architectural services, Australia's certification system, be it statutory or non-statutory, is unlikely to be effective in promoting exports. Reducing those barriers to trade, in fora such as the World Trade Organization, would be a more direct and effective way of promoting exports.

Ongoing action will be needed by Australia and other countries seeking to trade in professional (including architectural) services to continue developing and implementing initiatives to liberalise trade.

Chapter 7 Current Architects Acts: costs

FINDING 7.1

The registration provisions (including educational standards) of the current Architects Acts (under review) are important determinants of the anti-competitive impact of those Acts. The absence of significant consumer input and the predominance of architects in setting these standards raises concerns that they may not be targeted sufficiently at the needs of consumers in the building design and related services market.

FINDING 7.2

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. The restrictions on the use of derivative terms, such as 'architectural', generate greater costs by limiting the type and quality of information that can be provided to consumers, hence restricting competition. Also, there are important indirect restrictions on competition in some markets. These include the Queensland building market, where practice is restricted by other related legislation, and all levels of the government sector which, in purchasing building design and related services, often exclude non-architects from consideration for types of work in which they have clearly demonstrated competency in the private sector.

FINDING 7.3

In most jurisdictions, ownership restrictions on companies and partnerships wishing to use the title architect and its derivatives impose costs by restricting the transmission of relevant information to consumers, and by inhibiting the efficient development of multi-disciplinary enterprises and the efficient structure of architectural practices.

FINDING 7.4

Restrictions on advertising by architects contained in the South Australian and Western Australian Architects Acts, impose costs on both consumers and architects by unnecessarily limiting the flow of information to consumers. Fair trading legislation already provides adequate protection for consumers.

FINDING 7.5

A number of the current Architects Acts (under review) contain provisions (such as restrictions on non-architectural activities and supplanting) which impose small but unnecessary restrictions on architects' behaviour, imposing costs on both consumers and architects.

Chapter 8 Current Architects Acts: consistency and duplication

FINDING 8.1

The continuation of eight separate Architects Boards is likely to impose some small additional costs on architects. There do not appear to be unique local conditions justifying their continuation.

FINDING 8.2

Inconsistencies between jurisdictions regarding company ownership and registration requirements generate unnecessary additional costs.

FINDING 8.3

Additional costs are imposed on architects by multiple registration. If jurisdiction-based regulatory arrangements were to be retained in some form, costs could be reduced if mutual recognition enabled an architect registered in any one jurisdiction to be deemed to be registered in all other jurisdictions.

Chapter 9 Current Architects Acts: assessing costs and benefits

FINDING 9.1

Though community costs are limited because competition in the market for building design and related services is not hindered significantly, the community benefits of current Architects Acts, in terms of consumer protection, information provision, and community-wide effects, are negligible. The Commission, therefore, is of the view that the costs of current legislation regulating architects outweigh the benefits, and that net community benefits are negative.

Chapter 10 Alternatives: modifying existing legislation

FINDING 10.1

Introduction of reservation of the practice of architecture and building design to registered architects would have the potential to increase consumer costs significantly and to restrict substantially competition in the market. In particular, reservation of practice would not address concerns about the quality of the built environment efficiently or effectively.

FINDING 10.2

Amendment of objectives of the current Architects Acts (under review), to clarify that the Boards must represent the public interest, would be desirable. The transfer of responsibility for Architects Acts to consumer affairs departments would enhance the Acts' consumer protection focus.

FINDING 10.3

Majority non-architect membership of Architects Boards and their committees would enhance the Boards' consumer protection role.

FINDING 10.4

The consumer protection role of the current Architects Acts (under review) would be improved by modifications to complaints and disciplinary provisions which include:

- *increasing the accessibility of complaints mechanisms;*
- *separating investigative and disciplinary functions;*
- *appointing independent bodies to conduct disciplinary proceedings;*
- *appointing a majority of non-architect members to complaints and disciplinary bodies;*
- *providing reasons for outcomes and publicly reporting outcomes of disciplinary proceedings;*
- *making it explicit that professional conduct includes competent performance and that disciplinary action can be instigated if an architect is incompetent or negligent;*
- *expanding procedures available for resolution of complaints and increasing the range of penalties available; and*
- *providing independent avenues of appeal.*

FINDING 10.5

While there are arguments in favour of compulsory professional indemnity insurance, it may raise prices to consumers. Professional indemnity insurance may be more appropriately promoted by the profession than made compulsory by legislation.

FINDING 10.6

Continuing professional development (CPD) is desirable. However, ***compulsory*** *CPD is likely to generate undesirable effects, such as increasing the costs of architectural services. CPD is more appropriately promoted by the profession than made compulsory by legislation.*

FINDING 10.7

A national registration system would improve the current jurisdiction-based system. If statutory certification remains in place, a system of harmonised legislation adopted by jurisdictions and administered by State and Territory Boards (combined with a central listing) appears to be the most practical model for implementing a national system of statutory registration of architects.

FINDING 10.8

Introduction of a general standard of professional conduct (as in the Victorian Building Act) would allow removal of a number of specific requirements and anti-competitive provisions of the current Architects Acts (under review).

FINDING 10.9

Removal of ownership restrictions, and introduction of provisions requiring that an architect be responsible for the architectural services provided by practices, would eliminate costs associated with ownership provisions of the current Architects Acts (under review).

FINDING 10.10

Contestable certification could be achieved in several ways — by allowing certification by other bodies recognised by government, through opening additional channels within the current Board system, and by facilitating certification through current channels. This would enhance the public interest by allowing competent practitioners with a range of qualifications and experience to be registered as architects.

FINDING 10.11

Removal of restrictions on the use of derivative terms would have a beneficial effect on competition in the market for building design and related services.

FINDING 10.12

Introduction of a two-tier registration system which gives Architects Boards control over use of a title such as 'registered architect' or 'chartered architect', leaving use of the generic title 'architect' unrestricted, would improve the ability of those not registered as architects — including those with a degree in architecture — to compete in the market for building design and related services, while continuing to provide statutory certification and course accreditation for those architects and course providers who choose to meet registration requirements.

FINDING 10.13

Repeal of the current Architects Acts (under review) and regulation of architects under State Building Acts, as proposed in a recent National Competition Policy review of Victorian architects and building legislation, has the advantages that it would regulate architects in the same manner as building designers, and focus regulation on those practitioners who directly deal with consumers. However, the model as implemented in some jurisdictions has some undesirable features, most significantly, regulation of practice in Queensland.

Chapter 11 Alternatives: co-regulation and self-regulation

FINDING 11.1

Co-regulation, as proposed by the Royal Australian Institute of Architects (RAIA), is likely to produce outcomes no better than and possibly inferior to current arrangements for regulation of architects, primarily because it would simply transfer current Architects Boards' monopoly powers to the RAIA. While other co-regulation models could be devised which promoted consumer benefits and competition, similar improvements could be made to the current Architects Board model.

FINDING 11.2

Self-regulation of the architectural profession has the advantage that the costs associated with restrictions on title and derivatives would be eliminated, since there would be no compulsion on architects to be members of any certification body in order to use the title architect. Potential for competition and voluntary membership would provide a certification body with a strong incentive to uphold high professional standards, thus ensuring the credibility of its label(s) and providing consumers with reliable information about the quality of its members. In this way, the certification body would serve the consumer interest. Various building, town planning, environment, health and safety, and fair trading regulations would continue to (or could) regulate architects and their work, just as they currently regulate building designers and other practitioners.

FINDING 11.3

Non-architect building design practitioners are not exempt from section 74(2) of the Trade Practices Act 1974. There appears to be no reason to continue to exempt architects from this provision.

1 Introduction

This chapter provides background to this inquiry, introduces the major issues dealt with in the report and outlines participants' views. Also outlined are the structure of the report and the criteria which have guided the Commission in its assessment of current regulation and possible alternatives.

1.1 Background to the current inquiry

The Commonwealth Government has asked the Productivity Commission to report on the preferred option for regulation, if any, of the architectural profession in Australia.

The inquiry stems from the April 1995 Council of Australian Governments (COAG) meeting where Commonwealth, State and Territory Governments agreed to implement a National Competition Policy (NCP) reform package, designed to broaden the scope of competition policy. As part of this package, these Governments agreed to review and, where appropriate, amend or repeal — by the end of the year 2000 — all legislation that restricts competition (Competition Principles Agreement (CPA) clause 5 — see box 1.1).

All Australian States and Territories regulate the architectural profession, requiring all architects to be registered by statutory boards. Under the NCP, each jurisdiction[1] is responsible for reviewing its legislation, and several States and Territories have commenced or, in some cases, completed reviews of the architectural profession.[2]

The Commonwealth Government, on behalf of all States and Territories (except Victoria), has now asked the Productivity Commission to conduct a national review, with the dual purposes of assisting State and Territory Governments to meet their obligations under the CPA and to achieve 'greater consistency in any future regulation of the architectural profession in Australia'. In short, the Productivity

1 In this report, the term jurisdiction is used to refer to all States and Territories.

2 Whilst the terms of reference ask the Commission to take into account State and Territory reviews where they have been completed, only the Victorian review has been made publicly available.

Commission's review, as well as being consistent with CPA guidelines, is to adopt a national, rather than a jurisdictional, approach.

Box 1.1 **Legislation review requirements**

Under the Competition Principles Agreement (CPA), all Australian governments agreed to review and, where appropriate, reform legislation that restricts competition, by 31 December 2000.

Clause 5(1) of the CPA states that:

> The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
>
> a) The benefits of the restriction to the community as a whole outweigh the costs; and
>
> b) The objectives of the legislation can only be achieved by restricting competition.

The CPA also outlines how reviews should be conducted (clause 5(9)). Specifically, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

The terms of reference for this inquiry follow these requirements.

Source: PC (1998).

As noted, Victoria's legislation is not included in the terms of reference for this inquiry. That State has completed a review of the architectural profession and, in June 2000, released it for comment. Nonetheless, the Victorian Government is cooperating with the Commission and, where relevant, the Commission has referred to Victorian legislation.

This is the first national review of legislation regulating the architectural profession under the CPA. State and Territory regulation of architects, as well as self-regulation by the Royal Australian Institute of Architects (RAIA), was reviewed by the Trade Practices Commission (TPC) in 1992 (TPC 1992b), as part of a comprehensive study of the professions.

It is important to note that, while both reviews cover similar issues, the TPC review assessed regulation of architects against the requirements of the *Trade Practices Act 1974*, not the CPA, as required under the terms of reference for the current

inquiry. Though the TPC review assessed whether regulation of architects impeded competition, and considered a range of improvements designed to promote competition, it did not explicitly consider whether the public interest could be better served by alternative regulation, including non-legislative approaches.

It also should be noted that the Commission is required to assess *current* regulation. The Architects Accreditation Council of Australia (AACA), a national federation of Architects Boards, has developed National Legislative Guidelines for regulation of architects in Australia. While the Architects Board of New South Wales suggested that the Commission should assess these Guidelines rather than 'present historically-based legislation' (sub. 35, p. 4), the Guidelines have not been legislated in any jurisdiction. Nonetheless, the AACA Guidelines are assessed as a possible alternative to current Architects Acts (chapter 10).

1.2 Key issues

According to the Australian Concise Oxford Dictionary (1992), an architect 'is a designer who prepares plans for buildings, ships etc., and supervises their construction'. Other dictionaries contain similar definitions. For example, the Macquarie Dictionary (revised edn 1985) defines an architect as 'one whose profession it is to design buildings and superintend their construction'. The Websters New Collegiate Dictionary (1973) defines an architect simply as a chief builder. In other words, common usage defines the word architect in terms of the work an architect typically performs.

In Australia, legislation subtly alters this definition. All States and Territories currently have in place legislation that restricts use of the title 'architect' (and derivative terms such as 'architectural') to persons deemed to have appropriate qualifications and experience and who adhere to professional standards of conduct. In each jurisdiction, statutory boards — referred to throughout this report as Architects Boards — determine these requirements and administer tests for registration. Although use of the title 'architect' and its derivatives is restricted, all States and Territories (with some exceptions, including Queensland where related regulations restrict the practice of architecture) allow anyone to provide all or some of the range of services typically supplied by architects.

For most architects in Australia, building design remains a core feature of their work. However, others who also provide building design services cannot use the title 'architect' or describe their work as 'architectural'. In short, the various Architects Acts restrict the use of language, but not practice. This can be described as a system of statutory professional certification.

Throughout this report, unless otherwise stated, the word architect refers to a person registered under one or more Architects Acts and any derivative terms refer to the activity of an architect. Consequently, the use of language in this report is consistent with current regulation.

Those in favour of continued statutory certification of architects (predominantly architects, architectural companies, architects' associations and Architects Boards — see below) have argued that regulation of title and associated registration requirements protect the public by ensuring that comparatively uninformed consumers do not hire unqualified people purporting to be architects. They also claim that the registration system, by imposing minimum training requirements and rules of conduct, raises the average quality of architects which generates benefits for the wider community, including improving the quality of the built environment.

The contrary view is that statutory certification of architects is an inappropriate instrument for promoting the public interest and that the costs of anti-competitive effects of current regulations — largely borne by consumers and non-architects, but also by architects themselves — outweigh any benefits.

Thus, as required by the terms of reference, key issues to be addressed by the Commission in this inquiry are whether there is a public interest case for statutory certification of architects and, if so, whether current legislative arrangements achieve their stated aims, and do so more efficiently than any feasible alternative.

1.3 Participants' views

The Commission received 491 submissions in total (appendix A). A majority of submissions (more than 400) was received from individual architects and architectural practices. They generally supported retention of statutory certification, though many also considered that some improvements could be made to the current Architects Acts, along the lines of the AACA National Legislative Guidelines (chapter 10). State and Territory Architects Boards generally supported implementation of the AACA National Guidelines.

The RAIA, whose members comprise about 50 per cent of practising architects,[3] proposed a co-regulation model in which the RAIA would be given statutory authority to register architects and accredit courses (chapter 11). This proposal was opposed by Architects Boards and the AACA.

3 The Commission estimates that there are about 8600 architects currently practising in Australia (chapter 3 and appendix B).

Several academics and academic organisations participated in the inquiry and generally supported retention of a system of statutory certification and, in particular, statutory course accreditation.

Building designers who participated in the inquiry favoured relaxation of restrictions on use of derivative terms such as 'architectural' and removal of any *de facto* restrictions on competition which resulted from Architects Acts.

The Commission visited some major users of building design services but heard from few individual consumers. Of these, some expressed dissatisfaction with complaints procedures under Architects Acts.

1.4 Assessment criteria

The terms of reference (reproduced at the beginning of this report) require the Commission, in making its recommendations, to take into account the overarching principle that:

> 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.

In assessing current legislation and alternative approaches, the Commission has been guided by the terms of reference, regulation review principles developed by the Commonwealth Government (PC 1998) and the CPA itself (box 1.1).

All these sources require that regulation should be kept to a minimum and place the onus of proof on those who argue for restrictions. Core criteria include that regulation:

- is justified only where *community* welfare is enhanced;
- should minimise adverse effects on competition. Competition will tend to keep charges to the minimum needed to provide the amount, type and quality of service demanded by consumers; and
- where applied, should be transparent, open to scrutiny and regular review, and minimise administrative and compliance costs.

Under the *Productivity Commission Act 1998* (s. 2.8), the Commission also is required to have regard to general policy guidelines, including the need to improve overall economic performance and living standards and reduce regulation of industry.

Furthermore, for the purposes of this inquiry, the terms of reference ask the Commission, in making its recommendations, to take into account the need for regulation of architects to promote consistency between regulatory regimes and avoid unnecessary duplication.

Assessing costs and benefits

In assessing the net community impact of current (and alternative) regulation of the architectural profession, it is necessary first to consider what outcomes are likely to occur in the absence of the regulation. This outcome provides a yardstick against which to consider potential impacts of selected regulatory regimes.

Regulation will affect individuals and groups in different ways. In order to ascertain the community-wide impact of regulation of architects, the Commission must weigh up effects of regulation on architects themselves, their competitors, consumers, and the wider community.

For example, to the extent Architects Acts reduce choice and competition, architects' fees may rise. This will benefit architects at the expense of consumers and competitors, and may impose net costs on the community if consumption of architectural services declines. On the other hand, regulation may provide information and reassure consumers, thus promoting use of architectural services. Moreover, because buildings are used and seen by persons other than those who initially build or renovate them, regulation which affects design quality could have long-term effects on community safety, amenity and culture. In particular, the terms of reference require the Commission to take into account the quality of the built environment.

1.5 The Commission's approach

The COAG Guidelines for the Review of Regulation of the Professions (COAG 1999) (which are summarised in box 1.2) were developed to promote consistent application of the CPA across reviews of professional legislation. The structure of the report broadly follows this template.

Box 1.2 **Guidelines for the review of professional regulation**

The following guidelines for reviews of professional regulation have been developed to promote consistent application of the Competition Principles Agreement (CPA) across reviews of legislation for different professions:

- understand the context for legislative reviews (that is, the CPA);
- overview the professional legislation being reviewed (to ascertain how the structure and conduct of the profession is affected by legislation);
- assess the nature and significance of the market for the professional services (a critical step in assessing the impact of regulations on competition);
- assess the nature and significance for competition of the legislative restrictions (including higher prices for consumers; lower levels of service delivery; impact on efficiency, innovation and flexibility; suppression of information to consumers etc);
- address the nature and significance of legislative restrictions for market failure and other public interest concerns (including the extent to which legislation addresses information problems, improves service quality, limits negative and promotes positive spillovers etc);
- analyse the costs and benefits of the restrictions on competition (that is, weigh the public interest benefits against the costs of restricting competition); and
- identify alternative means of achieving the policy objective (to assess whether objectives can be achieved more efficiently).

Source: COAG (1999).

Report structure

Current regulatory arrangements in States and Territories, and their objectives, are set out in chapter 2. Chapter 3 describes the architectural profession in Australia, its role, the various markets in which architects compete, and trends in those markets. The public interest case for professional regulation (that is, regulation of service providers) in the market for building design and related services is presented in chapter 4. The extent to which the current system of certification adequately addresses domestic public interest rationales identified in the previous chapter is addressed in chapter 5. Chapter 6 explores the role of current legislation in promoting exports of architectural education and architectural services.

The effects of current legislation (including the operation of the various Architects Boards) on competition and efficiency are evaluated in chapter 7, while costs related to duplication and inconsistency of legislation across Australia are addressed in chapter 8. Chapter 9 draws together the preceding chapters and outlines the

Commission's assessment of the overall performance of current legislation. Possible improvements to current regulation (including the AACA National Legislative Guidelines) are explored in chapter 10. Co-regulation and self-regulation models are considered in chapter 11.

The Commission's preferred approach for regulation of the architectural profession is presented in chapter 12.

1.6 Conduct of the inquiry

The terms of reference for this inquiry were received on 5 November 1999. The inquiry was to be completed within 9 months — that is, by 5 August 2000.

As required by the terms of reference, and in line with normal Commission inquiry procedures, the Commission encouraged maximum public participation. Soon after receipt of the terms of reference, advertisements were placed in the national press and a circular was sent to a range of individuals and organisations thought likely to have an interest in the inquiry. An issues paper was released in mid-November 1999 to assist participants in preparing their initial submissions.

The Commission held informal discussions with organisations, companies, academic institutions and individuals to seek information and canvass a wide range of views. A list of those with whom discussions were held is set out in appendix A. Three hundred and eighty three submissions were received in response to the issues paper (appendix A). Interested parties were given the opportunity to respond to matters raised in the draft report by way of written submissions and at public hearings held in June 2000. One hundred and eight supplementary submissions were received in response to the draft report (appendix A). Transcripts of hearings and all non-confidential submissions (or non-confidential parts of submissions) were made available on the internet, at Productivity Commission and State libraries, and from Photobition Digital Imaging Centre.

The Commission thanks participants for their participation in meetings with Commissioners, in public hearings and for their submissions.

Professor Judith Sloan (Presiding) and Dr Neil Byron were the Commissioners for this inquiry.

2 Current regulation of architects

Key provisions of the State and Territory Architects Acts to be examined in this inquiry, including accompanying regulations and by-laws, are outlined in this chapter.[1] Although the Victorian Architects Act is excluded from the inquiry's terms of reference, some of its major provisions are discussed here, as these are relevant to considerations of national consistency. Background to the initial introduction of the Architects Acts is also provided, along with a brief discussion of other legislation affecting the practice of architecture.

2.1 Introduction

Prior to the introduction of the various State and Territory Architects Acts, the first commencing in 1921, there were no restrictions in Australia on the use of the title 'architect'. Those architects with formal Australian qualifications typically had graduated from technical colleges rather than universities. Their training was a mix of practical experience, in the nature of an articled apprenticeship, and formal tertiary training. Others practising architecture had a background in the building industry and often did not have tertiary qualifications. Many of these existing practitioners were granted registration when Architects Acts were first introduced.

New South Wales, Victoria and Western Australia enacted Architects Acts in the early 1920s, followed by Queensland and Tasmania towards the end of that decade. The South Australian Architects Act was passed in 1939 while Architects Ordinances were introduced in the ACT and the Northern Territory some 20 years later, in 1959 and 1963 respectively.

The various Architects Acts follow a similar general framework:

- objectives of the Acts are briefly specified;
- an Architects Board is established, which is responsible for registering and disciplining architects;

[1] An attachment to the terms of reference for this inquiry outlines the seven legislative instruments to be reviewed.

- broad criteria to qualify for registration as an architect are set out, with the Board being given some flexibility in the implementation of these criteria;
- use of the title architect and certain derivative terms by those not registered under the Act is made an offence or prohibited practice; and
- the Board is given power to implement disciplinary procedures for architects who breach codes of behaviour set out in the legislation.

As well as the clauses of the legislation outlined here, the way in which the Acts operate in practice will also depend on interpretations of provisions by the Architects Boards (Boards) and courts, and discretion exercised by the Boards in the way they implement the Acts. In all jurisdictions, the Boards are given varying degrees of discretion in the establishment and implementation of registration criteria and disciplinary provisions for architects. For example, Boards generally have elected, where possible, to resolve alleged breaches of title by discussions with offenders rather than immediately resorting to prosecution in the courts.

2.2 Objectives of the Architects Acts

Although public interest benefits are often cited as the rationale for the regulation of architects, the objectives contained in the various Acts do not directly mention consumer protection or broader community objectives. Rather, they all focus on the process of registration of architects and regulation of their professional conduct. The Boards are not given an overriding objective beyond implementing these requirements. For example, the New South Wales Architects Act stipulates that it is an Act to provide for the registration, and to regulate the practice, of architects. The Western Australian Architects Act states that it is an Act to make provision for the regulation of architects.

The Victorian Architects Act (s. 1) contains a slightly more detailed list of purposes, but these also relate only to the establishment of the Board and to registration, breach of title offences and disciplinary processes. Victoria is the only jurisdiction where some Board members specifically are appointed in order to represent consumers (s. 47(2)(a)).

Second reading speeches provide an indication of the underlying objectives of the Architects Acts and, for interpretation of the Acts, need to be read in conjunction with them. These speeches reveal dual motives of furthering the interests of architects and providing protection to consumers.

In introducing the Victorian *Architects Registration Act 1922*, the Minister, Mr Angus, stated:

> It is not proposed to deprive any man who is practising as an architect of the privilege of continuing to do so, but it is proposed to protect those architects who are qualified by making provision for their registration …
>
> I think the passage of the Bill will be in the best interests of persons desirous of erecting buildings and also of the architects themselves. (Legislative Assembly, Victoria, 1922, pp. 3052–3)

The Hon. W.J. George, in moving the second reading of the Western Australian *Architects Act 1921*, stated:

> The Bill has been introduced in the interests of one of the foremost professions in the world, and it has been drafted with great care … The Bill before honourable members has been re-drafted in an endeavour to produce a Bill which will meet the aspirations of the profession and at the same time fully safeguard the interests of the public. (Legislative Assembly, Western Australia, 1921, p. 1242)

In more recent times, when introducing new or amending existing architects legislation, Governments have made more of consumers' interests. In the Second Reading Speech for the Northern Territory *Architects Act 1963,* the Minister, Mr Ward, stated that the objectives of the Act were:

> … to ensure that architects practise their profession with some degree of control over their behaviour … and … to protect the public from people who are not fully qualified and who, in fact, engage in the work of an architect. (Legislative Council, Northern Territory, 1963, p. 89)

In the Second Reading Speech for the Victorian *Architects Act 1991,* the Minister for Planning and Urban Growth, Mr McCutcheon, stated:

> The Architects Act has been in operation since 1922 and it is generally acknowledged that there are no serious or persistent consumer problems in this area. The new legislation will ensure the Architects Act is made as efficient and effective as possible and that consumer interests are protected. (Legislative Assembly, Victoria, 1990, p. 2908)

The analysis of Freeland (1971) showed that the passing of the original State Architects Acts between 1921 and 1939 was, in most cases, the culmination of a long and strenuously debated process. In all but Queensland, the period between the first serious consideration of introducing a Bill and its final passing was between 15 and 50 years.

There does not appear to have been a community or building industry groundswell for the introduction of Architects Acts. Rather, Freeland indicated that the State Institutes of Architects were the driving force for their introduction:

> In January [1889] a suggestion was made [in South Australia] for the registration of architects 'to protect the public'. Even this, the desirability of registration in the public interest, was typical of South Australia. Other Institutes blatantly made their case in the interests of architects — until they learnt better. (Freeland 1971, p. 97)

While the legislature has provided limited guidance on the public interest objectives of the Acts, some Boards have more clearly enunciated a view of their roles. The Board of Architects of New South Wales described its role as:

> … the statutory body established to administer an Act of Parliament, the essential purpose of which is consumer protection and public benefit in the provision and delivery of architectural services. (sub. 35, p. 5)

None of the Acts contains any reference to the protection of the built environment. However, some Boards, the RAIA and individual architects have argued that this is also an important rationale for the Acts.

At the time of the initial introduction of the original State Architects Acts, the protection now provided to consumers by Fair Trading Acts, the *Trade Practices Act 1974* (TPA) and various building codes and planning laws, either did not exist, or was considerably weaker than that provided today.

2.3 The Architects Boards

The State and Territory Architects Boards, although varying in size and composition, are made up predominantly of architects. Architect members typically comprise a mix of those elected by registered architects, those nominated by the RAIA or academic institutions and, in some cases, a government architect nominated by the responsible Minister.[2] In New South Wales, seven of the ten board members must be architects (three elected by architects), while two others are appointed by institutions teaching architecture. The remaining member, appointed by the Minister, must not be an architect.

In Victoria, four of the eight Board members are required to be architects (two elected by architects), one must be a nominee of the approved Victorian schools of

[2] Members representing schools of architecture, although qualified in that discipline, might not be registered architects. In no jurisdiction except New South Wales is there a provision that those Board members not required to be architects *must* be non-architects. However, it is improbable that the representative of other professions required to sit on the Architects Registration Board of Victoria would be architects.

architecture, one a joint nominee of engineering, surveying and planning institutes and two are nominated by the Minister for Consumer Affairs to represent consumers. Currently, one of these consumer representatives is an architect.

In Queensland, three of the six Board members must be architects (two elected by architects), and the rest are nominated by the Minister, one of these being a representative of a prescribed school of architecture. At the end of 1999, all six members of the Queensland Board were architects. The Architects Board of South Australia consists of six elected architects and three persons nominated by the Minister, while the Architects Board of Western Australia comprises seven architects (six elected) and three persons appointed by the Governor.

Three of the five members of the Tasmanian Architects Board must be architects, two of these being elected by the council of the Tasmanian Chapter of the RAIA. Two other persons are appointed by the Governor. In the ACT, three of the five Board members must be architects (all appointed) and all three members of the Northern Territory Board must be architects who reside and practise in the Territory, one of whom is nominated by RAIA members.

The Victorian Architects Act is alone in making a specific reference to consumers' interests in the filling of some Board positions. However, in recent years, the Director of Consumer Affairs has acted as a Government nominee on the Board of Architects of Tasmania.

Across the eight Boards, of the 56 available Board positions, a minimum of 40 (or 71 per cent) are required to be filled by architects or representatives of schools of architecture.

The term of office for Board members is four years in New South Wales and two or three years in all other jurisdictions.[3] Members in all jurisdictions are eligible for re-appointment or re-election.

2.4 Restrictions on use of title

All jurisdictions prevent use of the title architect by those not registered under the relevant Architects Act. Some limited exemptions are provided for the use of the word architect by those engaged in activities which traditionally have included that term in their title. These include the titles 'landscape architect', 'naval architect' and

3 *Ex officio* members (for example, Government Architect or RAIA State President) have open-ended terms.

'golf course architect', when used by persons engaged in those professions.[4] In some jurisdictions, architectural draftspersons and suppliers of architectural materials also are given specific exemptions. A number of States make specific exemptions for State and, in some cases, Commonwealth public servants using the title architect in carrying out their public service duties.

However, the various Architects Acts differ in the extent of restrictions imposed on use of derivatives of the word architect and similar sounding words. The restrictions on use of derivatives in most jurisdictions are wide-ranging. The Tasmanian Architects Act (s. 19(3)) stipulates that:

> A person who is not an architect shall not, in respect of any practice, trade, or business, carried on by him, any office or employment held or exercised by him, or any work done by him, take or use to describe himself —
>
> (a) the word 'architect';
>
> (b) any other word or combination of letters that sounds or looks like the word 'architect'; or
>
> (c) any other title, description or addition that indicates or may indicate to the public that he is registered or entitled or qualified to be registered as an architect;
>
> whether alone or in combination with other words or combinations of letters.

The Queensland Architects Act (s. 88(5)) contains an additional provision stipulating that non-architects holding themselves out to be consultants or designers with respect to architecture, are deemed to be holding themselves out to be an architect. However, discussions with participants indicate that this clause in practice has had little impact on the promotional activities of non-architects.

The Victorian Architects Act defines a limited range of terms that may only be used by architects. Section 4 states:

> A natural person other than an architect must not —
>
> (a) take or use the title 'architect'; or
>
> (b) hold himself or herself out as being an architect; or
>
> (c) use the words 'architect', 'architecture' or 'architectural' (either alone or in combination with any other word or words or letters) in relation to —
>
> (i) the design of buildings or parts of buildings by that person; or
>
> (ii) the preparation of plans, drawings or specifications for buildings or parts of buildings by that person; or

4 The South Australian Architects Act is the only Act to restrict those eligible to use the title landscape architect. Section 28(3)(b) allows a person who is a corporate member of the Australian Institute of Landscape Architects to describe himself as a landscape architect.

(d) in any way imply that he or she is registered under this Act.

Thus, in Victoria, the restrictions on the use of the words architecture and architectural are limited to activities involving building design and preparation of plans for buildings.

None of the Architects Acts prevent those who have obtained qualifications in architecture from citing these. In addition, in New South Wales, a person with approved tertiary qualifications may be registered as a non-chartered architect and is entitled to use the title architect, but only if working under the supervision of a chartered architect. Requirements for registration as a chartered architect in New South Wales are equivalent to those for registration as an architect in other jurisdictions.

In all jurisdictions, penalties for breach of these provisions are relatively low maximum fines (generally around $1000 but up to $5000 in Victoria) with, in some jurisdictions, an ongoing fine for each day the breach continues. Breaches appear to have been kept to a relatively low level and only a very small proportion of cases has been taken to court. Rather than instigate prosecutions, the Boards generally are satisfied to warn offenders to desist. For example, in Western Australia between 1996 and 1998, the Architects Board issued 111 letters to non-architects deemed to be holding themselves out as architects. Only one of these was subsequently dealt with in court, the others being resolved to the Board's satisfaction.

Restriction of practice

None of the Architects Acts restricts the *practice* of architecture. Several explicitly indicate this. For example, the South Australian Architects Act (s. 28(3)(a)) provides that no offence is committed if an unregistered person designs, or superintends the erection of, a building. Similarly, the Western Australian Architects Act (s. 29(2)) states that nothing in the Act shall be deemed to prevent an engineer, builder, or other person from designing and superintending the erection of any building. A similar provision is contained in the Queensland Architects Act, (s. 88(7)(d)). Section 88(8) stipulates that the Act does not prevent non-architects from obtaining Local Government permits for erecting or supervising the erection of a structure or building.

2.5 Requirements for registration

In order to ensure a particular level and type of training is attained by architects, Architects Acts in all jurisdictions impose three broad requirements for registration as an architect:

- completion of an approved tertiary qualification in architecture;
- at least two years' recognised practical experience; and
- after fulfilling the first two requirements, passing of an exam in architectural practice, administered by the Boards.

The Boards are granted some discretion regarding which tertiary courses they recognise for registration purposes.[5] For this purpose, each Board undertakes periodic reviews of accredited courses in architecture to determine if they continue to meet the Board's requirements. In each jurisdiction there is a major review every five years supplemented by less comprehensive annual reviews.[6] The process is coordinated nationally by the Architects Accreditation Council of Australia (AACA).[7] In addition, the Boards are given discretion to determine what practical experience is necessary for registration and alternative training and experience requirements for those without prescribed qualifications in architecture who seek registration.

Those (including immigrants) who do not have accredited tertiary qualifications, but can demonstrate significant skill and experience in architecture, may apply to undertake the National Program of Assessment (NPrA). This is a project-based assessment of a candidate's competencies in design, documentation and project management.[8] Requirements for enrolment are a pass at year 12 level (or year ten plus two years' tertiary study), year 12 standard English, and a minimum of seven

5 As discussed above, the Architects Boards of New South Wales, Victoria and Queensland are all required to include representatives of approved schools of architecture as members of the Board.

6 For annual reviews, the panel consists of two Board members and two representatives of the RAIA. For the major five-yearly review, the panel is made up of three Board nominees, four RAIA nominees and one interstate academic.

7 The AACA describes itself as 'the federation of the State and Territory Architects Registration Boards in Australia' (sub. 55, p. 6). It is responsible for establishing, coordinating and advocating national standards for the registration of architects in Australia and for negotiating for the recognition of Australian architects by overseas registration authorities. It makes recommendations to the various Boards on these matters but decisions regarding registration remain with the individual Boards.

8 This national approach has replaced the jurisdiction-based prescribed Board examinations which previously provided a route to registration for those without prescribed tertiary qualifications.

years' acceptable work experience (in architecture, planning, building or other related fields), at least three of which must be in an architect's office (one of which must have been in Australia). This program is centrally coordinated by the AACA on behalf of the Boards. Successful completion is accepted by the Boards as a substitute for accredited tertiary qualifications.

For applicants with accredited tertiary qualifications or a pass in the NPrA, together with an acceptable level of practical experience, all Boards use the AACA's post-tertiary Architectural Practice Examination to assess whether the applicant has the required skills to be registered as an architect in the jurisdiction concerned.

The emergence of the uniform AACA examinations used by all Boards means that, in practice, the registration process is now very similar between jurisdictions.

The Architects Acts also contain provisions requiring applicants to be of 'good fame and character' in order to be registered as an architect.[9] New South Wales and Western Australia require applicants to be at least 21 years old, while the ACT sets a minimum age for registration of 18 years.

As already noted, the New South Wales Architects Act (s. 13) allows those with a prescribed qualification to be registered as a non-chartered architect. The ACT legislation requires an annual practising certificate, which is granted to any registered person on the payment of an annual fee, before an architect can carry on the practice of architecture on his or her own account.

In a number of jurisdictions, the Architects Act provides for applicants to appeal to the Courts against refusal to register, except on the grounds of failing the Board's examinations. In New South Wales, applicants can appeal to the Administrative Decisions Tribunal. In Victoria, an applicant (individuals or businesses) may appeal to the Civil and Administrative Tribunal against refusal of a registration application. In addition, although not expressly provided for in the Acts, the Boards allow candidates to appeal to the AACA regarding the outcomes of examinations required for registration and the assessment of overseas qualifications.

2.6 Disciplinary provisions

Once architects are registered, there are no further training requirements placed on them in order to maintain registration. They may undertake ongoing professional development, if they wish, but this is not mandatory. The sole ongoing process to

9 These words are used in the New South Wales and Tasmanian Acts. Provisions in other jurisdictions are variations on this theme.

assure consumers of a certain level of performance from registered architects is the disciplinary procedures of the Acts. All Boards have powers to deregister or otherwise discipline registered architects for breaches of various legislated criteria relating to personal, professional and other matters. As with other major provisions in the Architects Acts, the disciplinary process is broadly similar across jurisdictions, but there are some differences in detail and in appeal mechanisms.

The main grounds for the Boards to discipline architects are breaches of legislated standards of professional conduct. These standards vary somewhat between jurisdictions, but all focus on behaviour which may prejudice a client's interests or which relates to dealings with other architects. Major professional misconduct offences which may lead to disciplinary action in a number of jurisdictions (relevant jurisdictions are listed in brackets) include:[10]

- giving or offering any consideration to a person to secure work or attempt to secure work for him as an architect (NSW, Qld, SA, WA, ACT, NT);
- receiving financial benefit from a contractor, supplier or tradesman to a project designed or supervised by the architect (Vic, SA, WA, Tas, ACT, NT);
- without a client's consent, working on the design or construction of a building for which the architect is also the builder (NSW, Qld);
- acting as a both an architect and developer on the same project (Vic);
- not acting in a client's interests or putting his own interests ahead of the client's interests (NSW, Vic, Qld, SA);
- conviction of a felony or indictable offence (NSW, Vic, Qld, WA);
- failing to render accurate statements of accounts (NSW, Qld); and
- knowingly seeking an architectural commission already awarded to another architect ('supplanting') (Vic, SA).

These provisions mainly focus on the professional and personal behaviour of an architect rather than any deficiencies in services he or she provides. The Victorian Architects Act also imposes a clear duty of competent performance on an architect. Section 32(a) allows disciplinary action to be instigated by the Board if an architect is careless or incompetent in his or her practice. Similarly, regulation 5 stipulates that professional conduct involves an architect performing his or her work in a competent manner and to a professional standard. Failure to achieve this standard is deemed to be unprofessional conduct and provides grounds for disciplinary action.

10 The exact wording and meaning of each of these provisions usually varies somewhat between jurisdictions.

In the Western Australian Architects Act (s. 22A(1)), misconduct by an architect includes negligence or incompetence in the performance of any contract, while in Tasmania, section 17B(1) allows the Supreme Court to determine if an architect is professionally incompetent and order deregistration.[11] In several other jurisdictions professional conduct provisions also might be construed as requiring competent performance.[12]

The disciplinary codes of each of the various Architects Acts contain a variety of other clauses designed to protect clients' interests and require professional standards of work. Standards of professional conduct relating to advertising are discussed below.

Certain transgressions of personal behaviour standards also can give rise to disciplinary procedures. In all jurisdictions, conviction of a serious crime provides grounds for the Board to deregister or otherwise discipline an architect. The Northern Territory and the ACT allow deregistration if an architect is found guilty of habitual drunkenness or addiction to narcotics, or is found to be of unsound mind. New South Wales, Queensland and South Australia also allow deregistration on the grounds of mental illness. As well as deregistration, the Boards are usually given the option to fine, suspend or reprimand architects found to have breached the disciplinary provisions.

All Acts require the Boards to hold inquiries if they wish to pursue alleged breaches of the Act by architects. In some jurisdictions, consumers may bring charges of professional misconduct directly but, in most jurisdictions, inquiries are instigated by the Board on its own initiative or as a result of a complaint. In all but Victoria and Queensland, the Board also hears any resultant disciplinary case. The Victorian Act (Division 2) establishes a separate three person inquiry panel constituted by the Board for hearing alleged breaches of disciplinary provisions.[13] The Queensland Architects Act requires the Board to appoint an investigator to conduct an initial examination of whether an architect may have breached disciplinary provisions, before charges can be laid. If disciplinary proceedings are commenced, an

11 Section 16(5) of the Tasmanian Architects Act allows the Board to discipline an architect found guilty of improper conduct in a professional respect or infamous conduct in a professional respect. Neither of these terms are defined in the Act or its regulations but could be construed to include incompetence by an architect.

12 Section 66(2)(b) of the Queensland legislation stipulates that intentionally performing an act or making an omission that prejudices a client's interests or rights arising out of a commission, is misconduct in a professional respect. Regulation 38(1)(a) of the South Australian Architects Act requires an architect faithfully to discharge his professional responsibilities.

13 At least one of the members must not be on the Architects Registration Board, two must be architects (one from the Board and one not from the Board) and one must be a non-architect.

Architects Disciplinary Panel, independent of the Architects Board, is established by the Governor in Council.[14]

For some offences in some jurisdictions, the Board is required to deregister an architect found to have contravened the Act. However, in most cases it is empowered to choose between deregistration, suspension, fine or reprimand. The Victorian Architects Act allows for orders that an architect undertake further education or that conditions be imposed on an architect's registration relating to his or her practice.

2.7 Restrictions on ownership of enterprises

Most jurisdictions place restrictions on the management and ownership of partnerships and incorporated businesses wishing to use the title architect or its derivatives. Only the Tasmanian and ACT Architects Acts make no reference to unincorporated or incorporated entities. In Tasmania, the Board allows enterprises to use the title architect and derivatives if the person signing off architectural drawings is an architect.

Means of dealing with use of title by enterprises vary between jurisdictions. Western Australia registers 'practising firms' and 'practising corporations' as architects while the Northern Territory registers them as architectural partnerships and architectural companies. South Australia registers companies as architects, and firms with at least two-thirds of the members being architects (and the rest possessing prescribed qualifications) may call themselves a firm of architects. Victoria recognises entities as approved architectural partnerships and approved architectural companies, both of which are exempted from the Victorian Architects Act's prohibitions on the use of the title architect and certain derivatives. New South Wales directly excludes firms and corporations fulfilling certain membership criteria, while Queensland exempts approved architectural companies and unincorporated firms consisting entirely of architects.

The criteria for enterprises to be registered or to receive exemptions from title restrictions vary between jurisdictions. Broadly speaking, most revolve around two-thirds of the partners or directors of an enterprise, possessing two-thirds of the voting power, being architects. In Western Australia the required share is

14 Section 51 stipulates that the Panel is to consist of at least three members. The chairperson must be a retired judge or a lawyer of at least five years' standing and at least two other members must be architects of at least five years' standing.

three-fifths while in New South Wales it is one-third.[15] In South Australia and Western Australia the Architects Acts do not allow for the registration of single director companies.

Importantly for enterprises wishing to operate in several jurisdictions, the requirements for recognition of architectural partnerships and companies are often quite detailed and sometimes involve Board approval of non-architect directors and memoranda and articles of association. Also, many of these criteria vary between jurisdictions. The only requirement in the New South Wales Architects Act is that one-third of directors or partners of a firm are architects. However, in South Australia, in addition to at least two-thirds of directors being architects (holding two-thirds of the voting rights), any objectives of a company other than practising architecture must be approved by the Architects Board, the company's memorandum and articles of association must be satisfactory to the Board, and there are additional limits on those who can hold shares. In order to be registered in Western Australia, a corporation must have a place of business in that State, have a memorandum and articles acceptable to the Board, and non-architect directors and non-voting shareholders also must be considered suitable by the Board.

2.8 Restrictions on advertising

Several States, as part of the standards of professional conduct required of an architect, place some limits on the advertising that may be undertaken by architects. Breaches of these standards can invoke the disciplinary provisions of the Acts.

The Western Australian Architects Act (s. 22A(1)(i)) specifies as misconduct by a registered architect:

> Advertising, by any means, that he offers his services as an architect or that his services as such are available, unless the Board approves the advertising, whether in a particular case by written approval issued by the Board, or generally by by-law made under this Act.

As no such by-laws have been made, all advertisements by architects require individual written Board approval.

The Victorian Architects Act (by-law 16) only requires that, in advertising the availability and nature of their service, architects must ensure that the information is accurate and current. The South Australian Architects Act (s. 35(2)) stipulates that advertisements published in accordance with the Board's by-laws do not constitute

[15] The Board of Architects of New South Wales does not require such firms and companies to register, but does maintain a voluntary list for those that wish to be recorded.

professional misconduct. Under the code of professional conduct, by-law 38(7) requires that public communication shall be carried out in a professional and responsible manner. Some of the particular attributes required of such communications include that information is accurate, that professional colleagues are not denigrated, and that critical comment on architecture is informed and constructive.

Proven breaches of these provisions allow the Boards to reprimand, fine, suspend or deregister an architect.

2.9 Other relevant acts

Architects are affected by a number of other pieces of legislation covering the building industry, the professions and the business community in general. While this legislation is not under review here, it does affect the operation of the building design and related services market.

Building Acts

In 1991, the Australian Uniform Building Regulations Co-ordinating Council produced model legislative provisions for State Building Acts. This 'Model Act' provided for fundamental changes from previous building legislation in matters such as building approvals, safety, registration/accreditation and liability insurance.

The *Queensland Building Services Authority Act 1991* (BSA Act), the *Victorian Building Act 1993*, and the Tasmanian Building Bill 2000 all incorporate features contained in the Model Act. The requirements in these Acts for registration of many building industry occupations, including those involved in building design, have an impact on the regulatory environment facing architects. For example, to be registered, non-architect designers must have specified formal qualifications and carry indemnity insurance. The Building Acts of other jurisdictions currently do not require design professionals to be registered.

Queensland Building Services Authority Act

The Queensland BSA Act requires compulsory *licensing* of a number of occupations in the building (and demolition) industry including those undertaking building design work. There are over 100 separate categories of licence. Those registered under the Architects Act do not need to be registered with the Building Services Authority.

Unlike the various Architects Acts, the BSA Act restricts the work that can be undertaken by those registered as building designers. The BSA Act limits design of non-domestic buildings of more than 25 metres in height and domestic building above three stories, to architects.[16] There is no restriction on other dimensions of buildings that non-architects can design. The BSA Act further limits the type and dimensions of buildings on which design work can be done by those with lower categories of building designer licences. Those with restricted building design licences can only prepare plans and specifications for non-domestic building work to a maximum height of three storeys and domestic building work for single unit dwellings and outbuildings.

In addition, non-architect designers are restricted in the on-site supervisory and contract management work they are able to undertake unless they are licensed under the appropriate categories.

Requirements for building and residential design licences are approved academic qualifications and three years' experience in the type of work concerned. In addition, for non-limited licences an approved managerial qualification is required. Applicants who wish to trade must also meet the Building Services Authority's financial requirements.

Hence, while the Queensland Architects Act does not directly limit the practice of architecture, its operation in conjunction with the BSA Act places important restrictions on the operation of non-architects in the design sector of the market.

Victorian Building Act

In Victoria, the *Building Act 1993* requires many occupations involved in the building industry to be *registered* with the Building Practitioners Board of Victoria (BPBV) as 'building practitioners'. A number of major trades such as carpenters and bricklayers are not included in registration requirements because for major works they generally are sub-contracted by builders rather than employed directly by consumers. Electricians and plumbers have separate registration systems which make it an offence to carry out certain work if not registered.

Because they are already registered under the Architects Act, architects are not required to register as building practitioners under the Building Act but they may use the title 'building practitioner'. However, architects are subject to the compulsory insurance provisions of the Building Act. It is an offence for a building

16 This replaced previous responsible design clauses in the Building Act which allowed only architects or engineers to submit plans to local councils, unless councils decided to vary the requirement.

practitioner (registered or otherwise) to carry out work without the insurance required by a Ministerial Order made under the Act.

Unlike the Queensland BSA Act, the Victorian Building Act imposes no restrictions on the design work that non-architects are allowed to undertake.

In the case of draftspersons (architectural), the Building Act specifies that applicants must possess an associate diploma of architectural drafting and one year of satisfactory practical experience. Alternatively, the Board may allow registration based on any other combination of qualifications and experience it considers appropriate. In this regard, the BPBV has, until 2000, relied on industry groups, such as the Building Designers Association of Victoria, Master Builders Association, Housing Industry Association and Professional Design and Drafting Group, for those certificates of competency for registration of draftspersons that are based solely on work experience. On this basis, many existing building practitioners (including draftspersons) were 'grandfathered' into the new system (over 20 000 practitioners across all categories of building practitioner have been registered).

Section 176 of the Building Act makes it an offence for unregistered persons who carry out the business of building work to use various titles, including draftsperson (relating to the building industry), or to hold themselves out as being registered or as being qualified to practise as a building practitioner, either generally or in a particular category or class of registration.[17]

The Building Act has several provisions which have the effect of restricting practice as a principal in certain occupations, to those registered under the Act. Building inspectors and building surveyors *must* be registered before they are entitled to practise in these categories and builders *must* be registered before carrying out work under a domestic building contract of more than $5000. In addition, section 24(3) stipulates that a building surveyor must not issue a building permit unless satisfied that each building practitioner to be engaged in the building work is registered under the Act or is an architect.

The Building Act has no requirement for continued professional development in order to maintain registration. However, random performance audits are undertaken by the BPBV.

17 Titles restricted to those appropriately registered are building practitioner, building surveyor, building inspector, quantity surveyor and engineer or draftsperson (if the use of the title relates to the building industry).

Tasmanian Building Bill

This Bill — at the first reading stage in August 2000 — has many similarities to the Victorian Building Act. It requires builders, building surveyors and designers to be *accredited* as building practitioners if they are to be *responsible* for building work in their respective classes. Companies or partnerships may operate as building practitioners if one member of the firm is accredited in the relevant class. Persons without accreditation cannot act as principals with regard to building work and cannot hold themselves out to be a building practitioner. Tradespeople not contracting directly with owners and people working for building practitioners do not need to obtain accreditation.

The Bill also provides for different categories and classes within the above three types of building practitioners. The Bill provides for the possibility that practise within these classes and categories might be further restricted according to assessed competencies. Details of any such restrictions would be developed after the passing of the Bill.

The Bill requires designers, including architects, who are responsible for design, documentation, certification or inspection to be accredited. It is proposed that accreditation for all types of building practitioner will be undertaken by incorporated or statutory bodies appointed by the Minister for Infrastructure using competency criteria approved by the Minister. For architects (who are part of the designer category) the Board of Architects might fulfil this accreditation role. For those involved in building design and related services, these accreditors could also include existing professional bodies.

The Bill also requires building practitioners to have indemnity insurance as a condition of accreditation and also requires (as yet unspecified) ongoing professional development as a condition of re-accreditation every three years.

Other legislation

Architects are subject to the provisions of the TPA. In particular, the self-regulatory arrangements of the RAIA (for example, code of conduct and fee guidelines) are subject to authorisation by the Australian Competition and Consumer Commission.[18] In addition, from 1996 unincorporated businesses (including professionals) became subject to Part IV of the TPA dealing with anti-competitive

[18] Authorisation for these arrangements was granted by the Trade Practices Commission in 1984 following variations to several existing provisions including removal of the mandatory fee scale provisions.

practices.[19] However, any limitations imposed on architects' behaviour by Architects Acts (such as restrictions on advertising) are specifically exempted from the TPA (s. 51). In addition, qualified architects are excluded from section 74(2) of the TPA dealing with certain implied warranties in the supply of services by corporations.[20]

The consumer protection sections of the TPA (s. 52 and s. 53) and the State and Territory Fair Trading Acts contain provisions which prohibit companies and persons from engaging in misleading or deceptive conduct or making false or misleading representations.[21] The ACCC (1999) discusses the applicability of these provisions to the medical profession and argues that, in assessing whether use of a medical title is misleading or deceptive in a particular case, the courts are likely to have regard to the community understanding of the term concerned (such as indicated by a dictionary definition). These provisions are likely also to apply to use of the title architect by those offering building design and related services. Use of the word architect in a way that may mislead or deceive consumers may be an offence. However, unlike the Architects Acts, the consumer protection legislation would not prevent use of the title architect by those not offering their services directly to consumers, such as employees of firms providing design services, nor would they restrict common usage of the word architect or its derivatives outside the building industry.

State and Territory Fair Trading Acts provide alternative remedies to those available under the Architects Acts for consumers with claims against architects, and also apply to non-architects. The powers of Architects Boards are limited to disciplinary action against architects, with no provision for formal conciliation and associated redress between architect and consumer. However, it is possible that some form of voluntary restitution by an architect could eventuate in response to a consumer instigating the disciplinary process. Tribunals established under fair trading laws are able to order various forms of restitution to consumers if architects are found to have breached the relevant Acts.

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19 This followed passing of complementary legislation by the Governments of all States and Territories and the Commonwealth.

20 Section 74(2) requires services and related materials to be reasonably fit for a particular purpose made known by the consumer. Qualified engineers are also exempt from this section but the exemption does not apply to non-architects providing building design and related services.

21 Each State and Territory has fair trading legislation that substantially mirrors the consumer protection provisions of the TPA, including those relating to misleading or deceptive conduct. This allows these provisions to be applied more widely to the supply of goods and services by unincorporated enterprises.

All jurisdictions have building and planning codes incorporating approval and inspection processes for most building work. Architects and others designing buildings operate under the constraints and requirements of these regulations.

3 Architects and the market for building design and related services

This chapter presents a profile of the architectural profession in Australia, and discusses the services provided by architects and their competitors. The market in which architects compete is defined, and the market for building design and related services analysed.

3.1 Introduction

In chapter 2 it was noted that, in the present regulatory environment in Australia, the use of the title 'architect' is restricted to those who are registered under the relevant Architects Act. Moreover, only those registered are permitted to use derivatives of the word architect, such as architectural, to describe the services they provide.

As noted in chapter 1, unless otherwise specified, an architect refers to a person registered under one or more of the State and Territory Architects Acts.

The Commission encountered a number of problems obtaining accurate and comprehensive information about architects and the market for building design and related services in Australia. Often information is unavailable, outdated, or available for only one year but not over time. For example, it was not possible to obtain an accurate estimate of the number of practising architects and architectural practices in Australia from registration data held by the Architects Boards. Problems also exist with industry surveys due to small sample sizes and possible response biases. Furthermore, the most recent Australian Bureau of Statistics (ABS) survey specifically focussing on architectural services took place in 1992-93. Finally, for the purposes of this inquiry, ABS 1996 Census of Population and Housing data did not provide sufficiently disaggregated information on architects. The Commission has therefore presented anecdotal evidence in some sections of this chapter to supplement official and industry data sources.

3.2 Architects in Australia

The Commission has estimated that, at the end of 1999, there were approximately 8600 practising (that is, currently working) architects in Australia (table 3.1). Approximately 80 per cent of these architects resided in New South Wales, Victoria and Queensland. The method used to derive this figure is explained in appendix B.

Table 3.1 **Estimated number of practising architects, Australia, 1999[a]**

Jurisdiction	*Practising architects*
New South Wales	2 840
Victoria	2 306
Queensland	1 563
South Australia	581
Western Australia	928
Tasmania	149
Northern Territory	49
Australian Capital Territory	222
Total	**8 638**

a See appendix B for an explanation of how these estimates were derived.

Membership of the Royal Australian Institute of Architects

The RAIA is the national professional association of architects (box 3.1).

Box 3.1 **The Royal Australian Institute of Architects**

The RAIA has the following aims:

- to advance architecture;
- to maintain the integrity and standing of the profession;
- to promote the profession's views; and
- to encourage the study of architecture.

RAIA members must undertake continuing professional development and behave in accordance with the RAIA's Code of Professional Conduct. Disciplinary procedures may be instigated for breaches of the Code.

The RAIA issues a fee guide (not mandatory) to its members to assist in establishing a contract between client and architect. This arrangement was authorised by the then Trade Practices Commission in 1984.

Sources: RAIA (1999b); TPC (1992b).

The RAIA had a membership of approximately 8640 architects as at December 1999 (table 3.2). Of these members (and excluding those residing overseas), 4470 were 'active' — that is, practising in Australia.[1]

Table 3.2 **Membership of the RAIA, by jurisdiction, December 1999[a]**

Jurisdiction	*All members[b]*	*Active members in Australia*
New South Wales	2 723	1 500
Victoria	1 987	1 206
Queensland	1 152	742
South Australia	712	325
Western Australia	680	415
Tasmania	186	91
Northern Territory	71	46
Australian Capital Territory	260	145
Overseas	864	na
Total	**8 635**	**4 470**

a At 12 December 1999. **b** Includes active, graduate, retired, privileged/honorary, student and overseas members. **na** Not applicable — for the purpose of comparing the number of active RAIA members with the number of practising architects in Australia, overseas members have been excluded.

Source: RAIA (pers. comm., 29 February 2000).

It is therefore reasonable to conclude that approximately half (4470) of the practising architects (about 8600) were RAIA members at end 1999.

Company and partnership registration

Not all Boards are required by the Architects Acts to register architectural companies and partnerships (chapter 2). Of those that do, Victoria accounted for the highest number of registered companies and partnerships (487) at June 1999 (table 3.3). Each jurisdiction experienced a small increase in the number registered from mid-1996 to mid-1999. However, it is not possible to ascertain whether this growth is indicative of a long-term trend because of the limited time period for which data are available.

1 It is assumed that the 'active' category comprises practising architects. However, it may include a very small number of non-practising architects. On the other hand, the 'active' category may be a slight underestimate of the number of RAIA members who are practising architects to the extent that it excludes a few members in the 'graduate' and 'privileged/honorary' categories who are registered and practising. The RAIA, however, does not have a record of these nor the number of non-practising architects.

Table 3.3 **Registered companies and partnerships by jurisdiction, 30 June 1996 to 30 June 1999[a]**

Jurisdiction	*30 June 1996*	*30 June 1997*	*30 June 1998*	*30 June 1999*	*Percentage change 1996–1999*
Victoria[b]	475	484	495	487	3
Queensland[c]	285	290	305	314	10
South Australia[c]	na	na	Na	87	na
Western Australia[b]	132	134	141	139	5
Northern Territory[cd]	na	na	na	23	na

a Some jurisdictions do not register companies and partnerships. **b** Companies and partnerships. **c** Companies. **d** The Northern Territory data are at July 2000. **na** Not available.

Source: State and Territory Architects Boards.

These registration data, however, do not provide an accurate estimate of the number of architectural practices in Australia, primarily because they are likely to exclude many sole practitioners — in 1999, there were an estimated 2800 sole practitioners.[2] Moreover, the registration data, if summed across jurisdictions, underestimate companies and partnerships in Australia to the extent that not all jurisdictions register both companies and partnerships. On the other hand, registration data may overestimate to some extent the number of companies and partnerships because many are registered in more than one jurisdiction. Indeed, part of the growth in the number of registrations may be accounted for by multiple registrations.

Remuneration

Recent university graduates in architecture typically earn low starting incomes relative to other graduates. For example, university students completing architecture degrees in 1998 from RMIT University and the University of New South Wales, employed in any occupation (not just architectural practices), earned median[3] starting salaries of $27 250 and $29 000 respectively in 1999 (RMIT University 1999; UNSW, pers. comm., 3 March 2000).[4] These salaries placed architecture as

2 Estimated by applying the proportion of architects working as sole practitioners (figure 3.5) to the total number of practising architects (table 3.1).

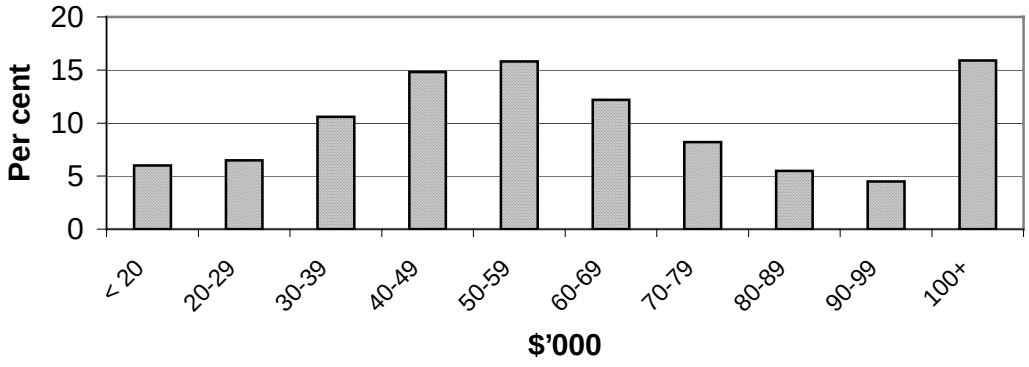
3 The median is one measure of average value. The median of a set of numbers is that number which has the same number of values less than it as there are greater than it.

4 RMIT University data relate to graduates with either a Bachelor or an Honours degree and include only graduates starting their first full-time job, whereas the University of New South Wales data relate to a Bachelor degree and are not restricted to the first job.

the third lowest-paid of 23 fields of study (GCCA 1999b).[5] Similarly, surveys in 1999 by the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) indicated that recent architecture graduates employed full-time in architectural practices earned a median base salary[6] of $32 000, compared with $38 000 for engineers (APESMA 1999a, 1999b).[7]

Several participants commented that experienced architects, with fifteen years or more working in the profession, earned low incomes relative to other professions with comparable qualifications. An RAIA survey of architects registered under the Architects Acts, undertaken in 1998,[8] indicated that the median gross income[9] range for architects was $50 000–$59 000 in 1997-98 (figure 3.1).[10]

Figure 3.1 **Gross annual income for architects, Australia, 1997-98[a]**



a Relates to individual architects. Includes overtime, interest, superannuation, dividends/profits, rents and any government assistance/allowance. Does not deduct tax.

Data source: RAIA (1998).

5 Building is included with architecture in this ranking.

6 Base salary excludes allowances, employer superannuation contributions and performance pay.

7 The APESMA architects remuneration survey includes architects and architecture graduates working as 'architects'. Approximately 80 per cent of respondents were registered. The survey had a very low response rate of approximately 11 per cent overall, and about 6 per cent for some salary data. It is therefore difficult to ascertain the extent to which the survey is representative of architects in general. The income data reported here refers to those who identified themselves as a 'Level 1' respondent in both the architects and engineers surveys (which comprises mainly graduates).

8 In October 1998 the RAIA surveyed all architects in Australia registered with State and Territory Architects Boards under the Architects Acts. The response rate was 23 per cent. The Commission assumes that the response group is representative of all architects.

9 Includes overtime, interest, superannuation, dividends/profits, rents and any government assistance/allowance. Does not deduct tax.

10 Annual average earnings were $37 000 in December 1997 for adults in full-time employment, working ordinary time.

This is consistent with the APESMA survey which found that in 1999 registered respondents had a median base salary of $53 750 (APESMA 1999a). This salary compares with $62 000 for engineers (APESMA 1999b).

Moreover, architects' incomes do not appear to be substantially increased by allowances, employer superannuation contributions, leave loadings and so on. APESMA commented that packages were not as significant a part of incomes for architects as they were for many other professions, such as engineers (pers. comm., 10 March 2000). In 1999, full-time employee architects[11] responding to the APESMA survey received employer superannuation contributions (median $3500), but only 3 per cent received award allowances (median $2000), 8 per cent received overtime (median $3000), and 21 per cent indicated that a vehicle was available for their use.

The gross median income for female architects was in the range $40 000–$49 000 compared with $50 000–$59 000 for male architects, in part reflecting the extent of part-time work undertaken by females and their concentration in the younger age groups (RAIA 1998).

Nonetheless, some architects earn substantially higher incomes. In 1997-98 approximately 16 per cent of architects who responded to the RAIA survey earned $100 000 or more (figure 3.1). New South Wales had the largest number of higher income architects, with approximately 23 per cent earning $100 000 or more, followed by Western Australia, Victoria and Queensland (with between 12 and 14 per cent), and Tasmania, with just 3 per cent.

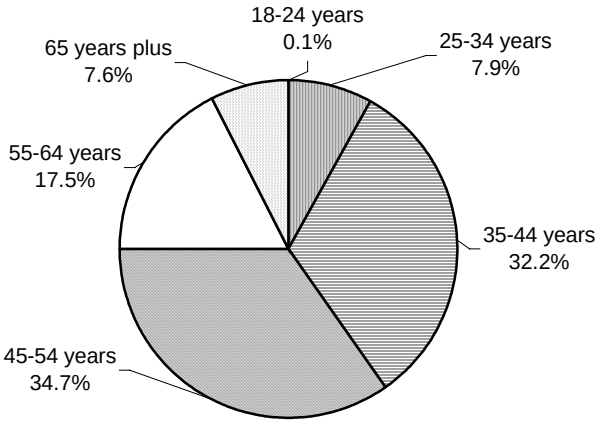
Age and gender

According to the RAIA survey, in 1998, the average age of architects was 48 years (RAIA 1998). Approximately 35 per cent of all architects were in the 45–54 years age group (figure 3.2).

The over-65 years age group accounted for a relatively high 8 per cent of architects. However, this group is likely to include non-practising (predominantly retired) architects. On the other hand, the proportion of architects in the two youngest age groups (18–24 and 25–34 years) was low (8 per cent in total) because many, at that age, have not gained the qualifications and experience required for registration.

11 Excludes sole practitioners, contract architects, proprietor/director architects and part-time architects.

Figure 3.2 **Age distribution of architects, Australia, 1998**



Data source: RAIA (1998).

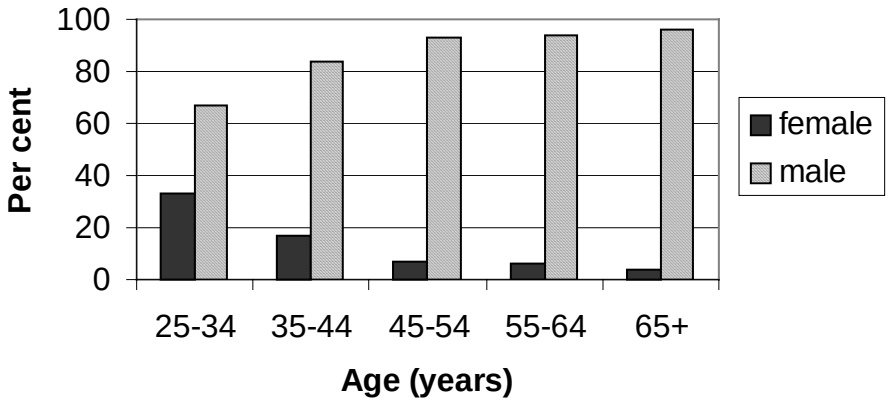
According to the Boards, males comprised almost 90 per cent of total registrations in late 1999. This proportion did not vary significantly between jurisdictions.

Although the proportion of female architects is low (about 10 per cent), there is evidence that it has increased in recent years. The RAIA, for example, estimated that the proportion of females in the profession has doubled since 1990, albeit from a low base (RAIA 1998). The representation of females in the youngest age category (figure 3.3) reflects recent tertiary graduations. Females accounted for between 30 and 60 per cent of architecture graduates in 1998, with about 40–45 per cent as the average (RAIA 1999c).[12] Participants commented that the proportion of female graduates has been increasing over time.

Female architects are more likely to be employed on a part-time basis than male architects. In 1998, one-quarter of female architects working within the profession were employed on a part-time basis, compared to 10 per cent of males (RAIA 1998).

12 Based on data provided to the RAIA by universities. Due to a lack of consistency, data on the proportion of females may relate to only domestic graduates, all graduates (domestic plus overseas) or all students enrolled in the course.

Figure 3.3 **Age distribution of architects, by gender, Australia, 1998**



Data source: RAIA (1998).

Graduate employment

An accredited bachelor degree in architecture is offered at 16 Australian universities.[13] Architecture traditionally has been a popular course with students, reflected in strong competition for places. For example, at the University of Melbourne, in 2000, a relatively high tertiary entrance score of 94.04 was required for architecture, compared with 90.85 and 82.60 for engineering and science, respectively (*The Age*, 17 January 2000, p. 5).[14]

In 1999 there were approximately 5600 students undertaking architecture courses throughout Australia. About 900 students completed their final year of a bachelor degree in 1998.[15] A survey of graduate work destinations indicated that the majority of architecture graduates found employment as an 'architect' (not registered) rather than in other occupations (GCCA 1999c). Sixty per cent of architecture graduates who completed their course in 1997, and who had gained full-time employment in 1998, indicated that they had done so as an 'architect' (figure 3.4). However, this is likely to be an underestimate because the architecture courses in this survey include those other than architecture degrees, for example,

13 Architecture courses are jointly accredited by the RAIA, Architects Boards and the Commonwealth Association of Architects (RAIA 1999c).

14 Round 1 'clearly in' ENTER scores.

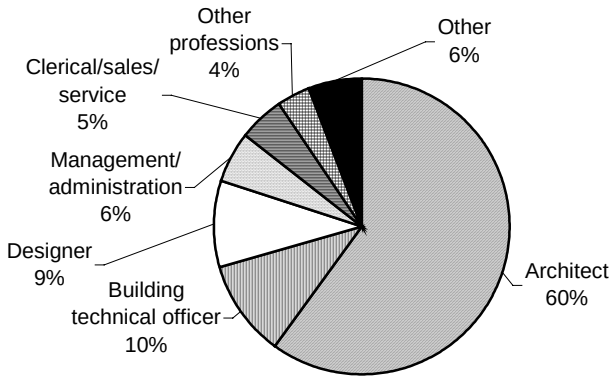
15 Estimates based on university returns to the RAIA (RAIA 1999c). Includes overseas and part-time students. The number of course students and graduations may be underestimated because not all universities provided data on overseas students.

industrial design and environmental design. Students completing these courses may seek employment in occupations other than architecture.

While many architecture graduates may gain employment as 'architects' (not registered), participants suggested that only a small proportion of graduates goes on to become registered under the Architects Acts. Jeffrey Keddie, a former registrar of the Architects Registration Board of Victoria, observed:

> A considerable number of those completing architecture courses do not proceed to registration. Whereas it is unusual for a medical graduate not to proceed to a registrar position and thence to registration, whatever the eventual future, it is common for architecture graduates not to proceed. (sub. 34, p. 11)

Figure 3.4 **Main occupation of architecture graduates in full-time employment, Australia, 1998[a]**



a Relates to students in their final year in 1997. Architecture graduates may have completed courses other than architecture degrees, for example, environmental and industrial design, and landscape architecture.

Data source: GCCA (1999c).

In 1998, new registrations of Australian graduates, expressed as a proportion of Australian architecture graduates, was 40 per cent.[16] While there is no direct relationship between the number of architecture graduates and the number of new

16 New registrations of Australian graduates refers to Australian residents, with an architecture degree from an accredited university, who passed the practice exams set by the various State and Territory Architects Boards in 1998 (except for Victoria, which supplied data on students who passed the exam in 1997-98). Overseas applicants, and applicants who became eligible to sit the exam through the Architects Accreditation Council of Australia's National Program of Assessment (or equivalent), were not included. Data were provided by the various State and Territory Architects Boards. Data on Australian architecture graduates were based on RAIA (1999c) and exclude overseas students who obtained a degree in architecture from an Australian university.

registrations in any one year,[17] this figure suggests the proportion of graduates who ultimately register under the Acts is low.

In explaining this low proportion, participants observed that not all students undertake architecture with the intention of becoming registered architects. The study of architecture, it was suggested, provided graduates with skills and knowledge that were also of value in other fields. Professor Gordon Holden, of the Queensland University of Technology, noted:

> Because of the breadth of architectural education and because it is problem based or project-based education I believe architecture graduates are very well equipped to turn their talents and skills and knowledge to a wider scope than architecture, and some do. (trans., p. 345)

At the Coal Face Pty Ltd, an architectural practice, commented:

> Quite a few people approach … the architectural courses at university, not so much to become an architect but because of what is offered within the course … The skill set that the architectural courses provide you with is quite transportable, even though some of the skills are quite specific … They equip you to do a lot of other jobs and they equip you with the mind-set to explore other fields. (trans., p. 695)

The Commission understands that it is common for architecture graduates to gain employment in the building design and related services industry in occupations such as building design, interior design, town planning and landscape architecture.

Moreover, of those architecture graduates who obtain work in an architectural practice, some do not seek registration as they may consider the benefits to be relatively small. At the Coal Face Pty Ltd observed that this may be the case for graduates who have no desire to establish their own practice (trans., pp. 692–3). Alternatively, others specialise in the provision of a particular service within a practice, rather than obtain experience in the broad range of areas necessary to obtain registration.

Other participants observed that sometimes a lack of opportunities for architecture graduates to obtain employment in an architectural practice — or to gain the necessary experience within a practice — made it difficult for graduates to satisfy registration requirements.[18]

17 Graduates need to complete at least two years of practical experience to be eligible to sit the practice exam.

18 Eligibility requirements for registration under the various State and Territory Architects Boards are discussed in chapter 2.

Hames Sharley, an architectural practice, noted:

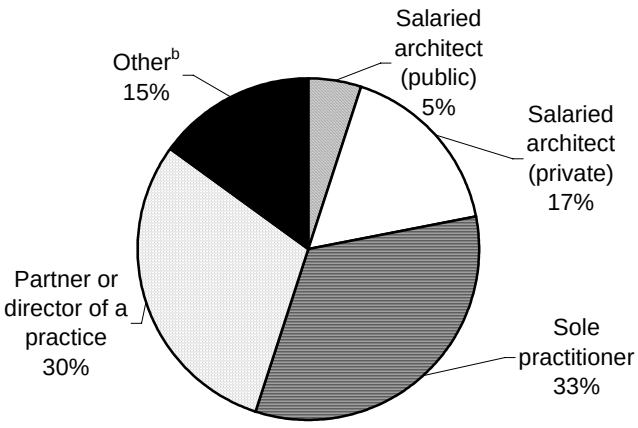
> Many firms do not wish to take on graduates because of the extra time required to train them in the practicalities of day to day operations. In the past this important task was undertaken for many graduates during their employment with Government agencies … (sub. DR422, p. 10)

The Architects Accreditation Council of Australia (AACA) is in the process of introducing some measures to address this problem. Under the AACA's proposed 'self-certification' scheme, architecture graduates would be permitted to use experience gained through self-employment to meet the practical experience requirements necessary for registration.[19] Self-employed graduates will be required to submit a statutory declaration to the appropriate Board stating that they have attained the practical experience required to sit the practice exam.[20]

Architectural practices

Of those who were employed as architects (registered), the RAIA survey indicated that, in 1998, approximately one-third were sole practitioners, and slightly fewer (30 per cent) were partners or directors of a practice. Of those who were salaried architects, the majority were in private practice, rather than in public sector employment (figure 3.5).

Figure 3.5 **Employment type within architect occupation, Australia, 1998[a]**



a Includes only those registered with Architects Boards. **b** 'Other' includes academic, contract/freelance architects, architects working outside the occupation, and other.

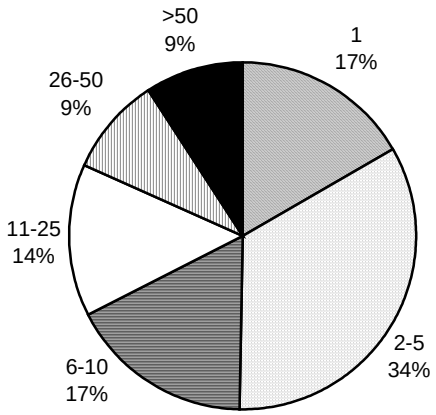
Data source: RAIA (1998).

19 A vote is to be taken on this proposal at the AACA's council meeting in September 2000.

20 The Board of Architects of Tasmania has already introduced measures to address this problem. The measures allow self-employed architecture graduates to have their work assessed by an architect (a 'mentor') to determine whether the work may be used to meet the practical experience requirements necessary for registration.

Given the significant proportion of architects working as sole practitioners, it is not unexpected that the majority of architects work in small businesses — half of these businesses employ five or less people, and a further 17 per cent employ six to ten people (figure 3.6). Only 9 per cent of businesses are medium to large in size — employing 50 or more people.

Figure 3.6 **Size distribution of architectural businesses, Australia, 1998[a]**



a By number of persons.

Data source: RAIA (1998).

3.3 Services provided by architects

Architects provide a range of services related to building design and construction. Through their contribution to the construction and maintenance of the built environment, architects play a major role in the development of projects with a substantial economic value. The Commission estimates that in 1998-99, the value of architectural services in Australia was approximately $800 million, or about 0.01 per cent of Gross Domestic Product (GDP) — this includes architectural services provided by non-architects as well as architects (ABS 1993, 1999).[21]

21 The value of 'architectural services' in 1992-93 — the period covered in the most recent ABS survey of the profession — was $574 million (ABS 1993). In order to derive an estimate for 1998-99, the Commission has assumed that the value of architectural services increased in line with the value of GDP over the period 1992-93 to 1998-99. However, the estimate of $800 million substantially overestimates the value of architectural services — that is, services provided by individuals and businesses registered under the Architects Acts — because the ABS 'architectural services' category, on which the 1992-93 figure was based, includes a number of services that can be provided by non-architects, such as architectural drafting, landscape architecture and town planning. The overestimation will be reduced to the extent that the ABS category does not include construction project management services that can be provided by architects.

A number of participants representing the architectural profession (the Board of Architects of New South Wales, the RAIA, and the University of Melbourne) cited the International Union of Architects (UIA) definition of architecture to illustrate the broad scope of architectural services:[22]

> The practice of architecture consists of the rendering of professional services in connection with town planning and the design, construction, enlargement, conservation, restoration, or alteration of a building or group of buildings. These professional services include, but are not limited to: planning and land use planning, urban design, provision of preliminary studies, designs, models, drawings, specifications and technical documentation, coordination of technical documentation prepared by others (consulting engineers, urban planners, landscape architects and other specialist consultants) as appropriate and without limitation, construction economics, contract administration, monitoring of construction … and project management. (UIA 1998b, p. 3)

The RAIA suggested that, in Australia, architects may provide any one, or combination, of the following building design and related services:

- pre-design services;
- site analysis services;
- schematic design/development application services;
- design development/development application services;
- contract documentation services;
- tendering and negotiation services;
- contract administration: construction and post-construction services; and
- supplementary/special services. (RAIA, sub. 16)

While providing a range of services, it is the design function that is most commonly associated with architects.

However, several other occupations, referred to collectively in this inquiry as non-architects, may also provide some, or all, of these services. These occupations include, but are not restricted to:

- building designers;
- architectural draftspersons;
- landscape architects;

[22] The UIA is an international non-government organisation representative of national professional architects associations. The UIA is composed of 92 professional associations, including the RAIA (UIA 2000).

- civil engineers and construction engineers;
- quantity surveyors;
- urban and town planners;
- project managers and facilities managers; and
- builders.

The Building Designers Association of Australia (BDAA) estimated (very broadly), that there were approximately 4500 to 5000 building design practitioners in Australia at the end of 1999. These included practitioners who labelled themselves as building designers, as well as those who labelled themselves as quantity surveyors, draftspersons, builders and so on, but provided building design and related services (BDAA, pers. comm., 21 March 2000).[23]

This may be an underestimate. According to 1996 ABS Census of Population and Housing data, 5100 people claimed to be employed as an architectural associate, the closest (although not particularly appropriate) occupation category to building designer in the survey (ABS 1996).[24] However, the ABS data exclude those who provide similar services to architects, yet label themselves as builders, engineers, quantity surveyors, project managers and so on.

Excluded from both of the above estimates, but also potentially in competition with architects, are others who may occasionally provide building design and related services, for example, some builders.

The BDAA had about 1300 members Australia-wide (25–30 per cent of the estimated 5000 or so building design practitioners) at the end of 1999, including building designers and those from other occupations (listed above) who provide services similar to those provided by architects.

The BDAA (sub. 40) observed that its members provided a broad range of building design and related services, including feasibility studies, design development, town planning drawings, tendering and negotiation services, and site attendance and contract administration. The BDAA commented:

> BDAA members are practitioners involved in designing projects across the full range of building activity, both residential and non-residential buildings including

23 The BDAA is a national body representing seven independent State and Territory Building Designer Associations. This estimate was derived by the BDAA in order to ascertain its potential membership.

24 As defined by Australian Standard Classification of Occupations (2121-13): architectural draftsmen and building drafting officer. The ABS does not have a specific category for building designers.

> commercial, industrial or institutional projects. In many cases, they supervise the construction of projects undertaken by them, at their client's request. (sub. 40, p. 2)

For the purposes of this inquiry, building designers are defined as non-architects who provide building design and related services, irrespective of whether they label themselves as building designers or not. The extent to which they compete with architects in the residential housing, commercial and public sectors is discussed in section 3.5.

Some participants argued that services provided by architects were differentiated in a number of aspects from services supplied by non-architects. These aspects include the high quality of services provided by architects, architects' focus on the design service, the extent of architects' knowledge and education, and the architect's role as an intermediary in the building process.

Several participants claimed that building design and related services provided by architects were of a consistently higher quality than services provided by non-architects. For example, the RAIA and the Board of Architects of New South Wales argued that the services of architects, compared with non-architects, were differentiated by the knowledge, expertise, high ethical standards and integrity of the former.

They cited the UIA definition of professionalism in architecture:

> Members of the architectural profession are dedicated to standards of professionalism, integrity, and competence, and thereby bring to society unique skills and aptitudes essential to the development of the built environment and the welfare of their societies and cultures. (UIA 1998b, p. 2)

The University of Queensland highlighted the community-wide aspects of services provided by architects as a distinguishing feature:

> The broad environmental and social issues connected with the cumulative effect of many designs, as they grow to become communities, towns and cities are only properly considered by design professionals trained as architects … Part of the reason for the five year training of architects is because community interests are included within the expertise that trainees acquire. (sub. DR480, p. 1)

Other participants suggested that it was architects' focus on design that distinguished architects from non-architects. Jeffrey Keddie observed:

> The single most characteristic form of market differentiation is the emphasis on the primacy of design. Architects by training and inclination focus on design, broadly interpreted, while non-architect providers (unless they have the same training but remain unregistered) do not rely upon the same extent and depth of training, nor, in most instances, is design per se their focus. (sub. 34, p. 4)

Several architects emphasised that it was the breadth of knowledge of the architect, and the ability to provide a broad package of services — such as documentation and contract administration in addition to design — that differentiated architects from non-architects. Greg Snedden, an architect, observed:

> The 'quality standard of work' that distinguishes architects is in regard to the range of traditional services usually offered not just the design. These services that are undertaken (especially for residential work) usually includes full tender documentation (specification and working drawings) where both the client and tenderers are fully informed as to the expectations of materials, finishes, fittings and fixtures. (sub. DR432, p. 3)

In particular, the role of the architect as an intermediary between client and builder was identified as an important component of the services offered by architects that differentiated architects from non-architects. Depending on the nature of the project, the architect may perform the role of the client's representative on the site, for example, coordinating the project. In addition, when architects are employed in the role of contract administrator they act as an independent certifier, determining when the requirements of the contract have been fulfilled to the satisfaction of the client and the builder. Tom Maxwell, an architect, commented:

> This contracted arbitral role during the construction process requires sound contract law knowledge and sensitivity … The professional bachelor of architecture degree courses are the only courses which include professional practice with a major content of contract administration and contract law as a compulsory element. Engineering courses do not and building courses currently concentrate on direct client/builder contracts with no intermediate superintendent and certifying role. (sub. DR454, pp. 1, 2)

However, several participants argued that there was neither a clear distinction in the quality of services, nor the range of services provided by architects compared to non-architects. The BDAA commented:

> It varies a lot right across the spectrum but certainly the top 15 or 20 per cent of … our members would provide a full range of architectural services, which probably goes right through to supervision, project management and that sort of thing. That wouldn't be all of our members, but certainly an appreciable percentage … (trans., p. 376)

Furthermore, some participants also disputed the notion that a clear distinction existed in the quality of services provided. For example, Michael Purtell, a building designer, in relation to design standards, observed:

> Architects … infer that only Architects can give a quality standard of work. This is simply not true. Building Designers have a very high standard of workmanship with many now winning awards for not only housing but also commercial, industrial and government projects. (sub. 374, p. 2)

The notion that professional conduct differentiates architects from other providers also was questioned. Jeffrey Keddie observed:

> It is not helpful to mark this differentiation by appeals to distinctions between 'professional' and 'non-professional' provision. Building designers, for example, strenuously maintain both the design integrity of their work, including claims of equality with architects, and the 'professionalism' with which it is carried out. The 'professional' distinction too readily becomes one of social perception. (sub. 34, p. 5)

3.4 Defining the market in which architects compete

Assessing the impact of legislative restrictions on competition requires an understanding of the market for the services that architects supply.

The Trade Practices Commission (TPC) (1992b) defined the market for a particular class of services as including those services which are substitutable for, or otherwise competitive with, those services in either production or consumption. The key determinant in defining a market is identifying those services that are substitutable in consumption and/or production.

According to the Australian Competition Tribunal:

> Within the bounds of a market there is substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is a field of actual and potential transactions between buyers and sellers amongst whom there can be strong competition, at least in the long run, if given a sufficient price incentive. (quoted in COAG 1997, pp. 23–4)

As restrictions in the various Architects Acts apply only to use of title (and derivatives), and not to the right to practise, generally there are no restrictions on non-architects providing similar services to architects.[25] However, as discussed above, several participants considered that services provided by non-architects should not be regarded as substitutes for services provided by architects. Many architects believed that they provided a clearly differentiated service from non-architects and, as such, considered that use of the term 'substitute' implied an equality of service that did not exist. John Chappel, an architect, noted:

> Architects <u>do</u> compete with other architects, but since they provide a unique service, not available elsewhere, they cannot be said to 'compete' with draftsmen, builders, and other 'building design practitioners' who are offering a range of abbreviated and partial services. (sub. DR403, p. 3, emphasis in original)

[25] The *Queensland Building Services Authority Act 1991* restricts the design of buildings over 25 metres in height to architects (chapter 2).

Without doubt, in the building design and related services market, there will be differences in the ability, and areas of specialist expertise, of service providers. Consumers generally make decisions on whether to engage a service provider based on a range of factors, in addition to the perceived quality of the provider. These factors might include the client's budget, the service provider's area of expertise and the availability of the service provider. For some consumers of building design and related services, the purchasing decision may entail considering the services of architects compared to non-architects.

Several architects acknowledged that architects do compete with non-architects in the market for building design and related services. As noted by Joseph D'Ambrosia, an architect:

> There is fierce competition in the industry with architect fees challenged and undercut by low service draftsmen, unqualified building designers and even other architects competitively bidding for the same job. (sub. DR414, p. 2)

And APESMA commented:

> 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 … 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. (sub. DR435, p. 2)

Thus, although non-architects are not permitted to label or market any of their services as architectural services, the evidence suggests that many consumers regard particular services provided by non-architects as closely substitutable with those provided by architects.

In its 1992 review, the TPC defined the relevant market in which architects compete as the market for building design services (TPC 1992b). This definition was intended to embrace the range of services that architects provide — including design, documentation, contract administration and site analysis. While the Commission agrees with the scope of services covered by this market definition, it considers that it should be made clear that the services architects provide extend beyond design services (section 3.3).

Thus, for the purposes of this inquiry, the relevant market in which architects compete can be described as the market for building design and related services. However, as discussed below, the types of services provided and the extent of competition may differ across market sectors.

FINDING 3.1

Evidence suggests that many consumers regard particular services provided by non-architects as closely substitutable with those provided by architects. The relevant market in which architects compete is the market for building design and related services.

3.5 Architects and the market for building design and related services

There are a number of different ways to segment the market for building design and related services. The TPC, for instance, classified the market for building design services into domestic, industrial, and commercial building sectors — a classification system based on the type of building project (TPC 1992b). The Commission has chosen a slightly different classification reflecting the types of clients who use building design and related services, because there appear to be variations in the extent of information problems across major consumer groups. This has direct relevance to the potential public interest role of architects legislation.

Box 3.2 summarises the role of architects in each of the market sectors profiled below.

Box 3.2 **Domestic market sectors in which architects compete**

Residential (new houses and renovations and additions)

- More than two-thirds of architects carry out work in the residential market, mainly higher-value houses. For many sole practitioners and small practices, it is an important source of income.
- In this market, architects tend to provide both design and contract administration — in other words, they provide a 'traditional' architectural service.

While the residential market, especially renovation, is important to many architects, they do not hold a large market share — estimates range from 5 to 25 per cent — and face intense competition from project home builders (who dominate the new housing market) and others, including building designers, draftspersons etc.

(Continued next page)

Box 3.2 **(Continued)**

Commercial and industrial (offices and shops, multi-storey towers, large industrial estates and shopping complexes)

- At the lower-value end of the market, the profile of architects and the services they provide are similar to those for the residential sector, that is, smaller practices providing traditional services, in competition with a large number of other providers of similar services.
- At the higher-value end of the market, a smaller number of larger architectural practices dominate. Even here, competition is intense due to increased specialisation in the sector since the 1960s. Thus architects today may provide design services as consultants rather than act as project coordinators.

Public sector

This sector incorporates all levels of government and a range of projects from schools and public housing to hospitals and sporting facilities.

- Architectural practices of all sizes participate in this sector.
- Competition appears far less intense in all aspects of the services provided by architects largely due to buying practices of most governments (for example, through pre-qualification registers which exclude non-architects). Nonetheless, non-architects increasingly are competing on smaller government projects.

Residential housing

In 1998-99, work commenced on approximately 100 000 private sector new houses in Australia, valued at approximately $12 billion. In the same year, the value of alterations and additions in the residential sector was $3 billion. The combined value of these building activities accounted for approximately half of the total value of private sector building commencements (ABS 2000).

Architects provide a variety of services in relation to the construction of residential housing, including design, documentation and contract administration. Information provided by participants indicated that it was common for architects, on those projects on which they were employed to provide design services, also to provide some services in 'the role of the client's representative' on the building site. The RAIA's Archicentre — a consumer information service run by the RAIA — observed that architects are engaged to provide contract administration on construction services on about 50 per cent of residential projects arranged through the centre (Archicentre, pers. comm., 15 March 2000). However, this represents a small proportion of total residential construction.

The residential sector provides a significant component of work for many architects. Of those architects who responded to the RAIA's 1998 survey of the profession, 70 per cent indicated that they spent some time working on new housing projects, and the same proportion indicated that they were involved in housing alterations and additions. Respondents indicated that, on average, they spent 21 per cent of their time working on alterations and additions and 17 per cent of their time on new housing projects (RAIA 1998).

Moreover, several participants noted that the residential sector is the most important building sector for sole practitioners and small architectural practices. They observed that these practices earned a substantial proportion of their revenue from this sector, particularly from alterations and additions. Archicentre advised that the majority of practices with residential clients, working through the centre, were small architectural practices (Archicentre, pers. comm., 15 March 2000). Michael Harris, a principal of a small architectural practice, noted:

> I would suggest, as is the case with my practice, the majority of small practices operate in the lower end domestic, small commercial and small industrial markets. The majority of my residential commissions are for alterations and additions where the fully qualified architect can make the greatest contribution and the greatest damage can be done by less qualified service providers. (sub. 142, attachment 1, p. 2)

Participants indicated that architects tended to work on housing alterations and additions because of the need to have designs tailored to existing structures, and higher-value housing projects where they were engaged by consumers who had the ability, and willingness, to pay for individual designs. For example, Jeffrey Keddie observed 'architects seek to capture that section of the market for whom design quality, and therefore design centrality, is desired and affordable' (sub. 34, p. 4).

Nonetheless, although this sector is important to architects, it appears that they do not hold a large share of the market for building design and related services for residential housing. The BDAA estimated that architects currently undertake around 25 per cent of design work in this sector (BDAA, pers. comm., 6 March 2000). However, this may be an overestimate — the Victorian Regulation Review Unit noted that, based on anecdotal information, in the late 1980s architects were employed directly to design no more than 5 per cent of residential buildings in Victoria (RRU 1990).[26]

[26] Whether this figure includes renovations and alterations is not specified.

Some participants observed that architects have never held a large share of the market for building design and related services in the residential market. The Sole Practitioners Group noted that architects hold only a 'small percentage' of the residential market 'with emphasis on unique houses':

> Architects have traditionally designed, documented and administered the building contracts for unique and high-value housing projects. These clients expect more in design and construction expertise to ensure value for money. (sub. DR429, p. 2)

The low market share reflects the relatively low proportion of residential consumers who directly hire providers of building design and related services, and the extent of competition from alternative providers. The majority of new houses in Australia is commissioned by the client engaging a builder or building company to provide a complete building package incorporating design and construction. For example, Henley and AV Jennings (the two largest builders of detached residential housing in 1997-98 (HIA 1999)), allow consumers to choose a design from the company's portfolio of pre-designed houses which the company then builds.

The Housing Institute of Australia reported that Australia's largest 100 building companies, combined, accounted for 42 per cent of residential housing commencements in 1998-99 (HIA 1999).[27] Although architects may not be directly involved with the client in the provision of this type of housing, it is possible that architects were employed by the project building company or builder to develop a portfolio of designs. It is also possible that individuals with architectural qualifications recognised by Architects Boards, but who are not registered, are employed by large housing companies. In neither case, however, can the housing company market its houses as architecturally designed (chapter 2).

In those residential projects which do not use standard designs, particularly house renovations, architects compete with a range of non-architect providers, including building designers, architectural draftspersons and building consultants, who may provide some, or all, of the range of services provided by architects. The Commission understands that competition in this market segment is intense.

The AACA commented:

> Because the provision of architectural services is highly competitive, anyone who describes themselves under terms such as 'Building Designer', 'Architectural Technician', 'Architectural Drafter' whether they hold qualifications or not, can compete with architects. Probably the market sector in which they compete the most is the residential one … (sub. 55, p. 9)

27 Building companies are ranked by the number of housing commencements.

Commercial and industrial building sector

The commercial and industrial building sector encompasses a diverse range of building projects including commercial projects, such as large residential developments, offices, hotels and shopping complexes, and industrial projects comprising mainly factories and warehouses.

In 1998-99, private sector commercial and industrial building commencements[28] in Australia were valued at approximately $14 billion, with non-residential developments, such as offices and hotels, accounting for nearly 70 per cent of the total (ABS 2000).

Comments from participants suggest that the range of building design and related services provided by architects in relation to lower-value commercial and industrial private sector projects is similar to those provided by architects in the residential housing sector (see previous section).

Building designers observed that they provided similar services to architects for lower-value projects. James Frewin, a building designer, noted:

> In the past 35 years or so I have been involved in the design and documentation of projects ranging from additions, new residences, commercial, industrial, places of worship, semi-public buildings, etc … I recently completed the Project Management of a $1m complex, and as such was responsible to the project building committee for all aspects of documentation, construction, liaison with Engineers, certification of progress payments, etc. (sub. 377, p. 1)

However, the role of architects in higher-value projects (one-third of surveyed architects worked on projects valued at $10–25 million in 1997-98 (RAIA 1998)) appears to be somewhat different and, moreover, has changed over time.

Architects, in their 'traditional' role on higher-value projects (typical of the 1950s to 1970s) held an important position as the client's representative on the building site, and were responsible for overseeing the project and relaying the client's demands to other consultants and the builder. William Curnow, an architect, noted:

> Under the traditional 'hard dollar' method, the client (owner) engaged an architect to design a facility. The architect engaged consulting engineers on behalf of the client and coordinated their inputs into the design. It was the architect's responsibility to keep within the client's budget and to ensure that all the client's needs were met. The architect called tenders and awarded the construction contract to a builder on behalf of the client. The architect then supervised the construction on behalf of the client. (sub. 145, p. 4)

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28 Includes non-residential building (such as offices) and new 'other residential' building (such as townhouses and apartment buildings, but not houses).

This traditional role, described by William Curnow, is now less common because of several changes in the building industry. First, there have been significant developments in building procurement arrangements — that is, the way in which the owner contracts out the building process — since the early 1960s. A common characteristic of new procurement arrangements has been a decline in the use of the architect as the client's representative in the building process. For example, under Design and Construct (D&C) procurement the client engages a contractor — usually the builder — to deliver a project, generally at fixed cost. The contractor, responsible for both the design and construction elements of the project, usually engages a 'design manager', who may be an architect, to provide the design services.

This trend was reinforced during the 1990s with contracting arrangements, such as Build Own Operate and Transfer (BOOT). Most recently, Private Finance Initiative (PFI) contracts have seen the inclusion of financing with the design and construction package, resulting in further diminution of the part played by architects in the building process.

Second, the increasing complexity of building technology has resulted in the emergence of a range of new specialist service providers who compete with architects across the range of building design and related services. Garry Stevens, an architectural sociologist, observed:

> In the past twenty years those individuals labelled as 'architects' have seen many of the functions they were used to providing being taken away from them. Today we have facilities managers, contract managers, interior designers, interior 'architects', urban planners, style consultants, project managers and a variety of others who have taken on roles which architects were wont to do before, say, World War II. (sub. 380, p. 5)

Project managers may be used to manage a number of different procurement arrangements, including the traditional tender system. Consequently, architects are more likely to be employed on a building project, along with other consultants, for their specialist expertise in one particular field, such as design.

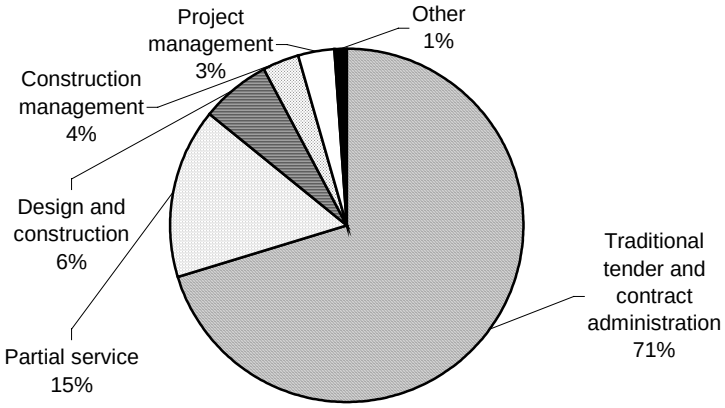
However, some participants disagreed with the view that the architect's role in the procurement of higher-value building projects had diminished. Tom Maxwell noted:

> There are few genuine master builders these days working on major complex projects. That role has now largely passed to the master designer, the architect who creates and leads the design team, which includes amongst others all of the engineer, survey and costing disciplines … My own experience has been that the architect is generally held in high regard by major developers, builders, institutions and government departments, not only for their design team leadership roles but also for their 'on the job' contract management and superintendents roles. (sub. DR454, p. 4)

The Commission encountered difficulties obtaining evidence about architects' involvement in building procurement arrangements in the commercial sector, especially changes over time. The available data are either limited or inconclusive.

However, an RAIA study provides some information on contractual arrangements used to engage architects during the construction phase of a building project (RAIA 1999d).[29] The study, based on a survey of architects and their clients, found that when architects were engaged during the construction phase, their involvement was most likely to be in the role of providing traditional tender and contract administration services (figure 3.7).

Figure 3.7 **Contractual arrangements used to engage architects during the construction phase of a building project, Australia, 1999[a]**



a Data compiled from architects' responses to the survey question: 'During construction, what percentage of your services were provided under the following contractual arrangements?'. 'Percentage of your services' (for example, in terms of time or number of projects) was not defined. Data include all building sectors, not just commercial and industrial.

Data source: RAIA (1999d).

The RAIA (sub. DR489), in commenting on traditional and non-traditional procurement arrangements, suggested that the survey results indicated that the majority of building projects utilised an architect to provide a full range of services under traditional procurement arrangements. However, due to the limited nature of the survey, it is difficult to use these data to ascertain the extent of architect's involvement in traditional and non-traditional procurement of commercial and industrial buildings.

- The data are indicative of only those projects where architects have a role in the construction process and, as such, the study provides no indication of the

29 In 1999 the RAIA surveyed 2000 architect subscribers to the RAIA's Practice Services. The response rate was 8.5 per cent. The RAIA also surveyed 800 clients nominated by responding architects. The response rate from those clients was 28 per cent.

procurement arrangements used for projects where architects are not involved in the construction process.[30] Nor do the data provide any indication of the procurement arrangements for building projects that do not employ an architect, but choose to engage a non-architect.

- The survey results have not been disaggregated by sector.[31]
- It is difficult to ascertain the extent to which the data are reliable because of the low survey response rate.
- The study does not throw light on the extent and nature of changes over time in contractual or procurement arrangements.

While there has been some debate over the extent of the share of building design and related services held by architects in the commercial sector, participants agreed that changes in the sector over the last 50 years had resulted in architects facing increased competition. As Elwyn Wyeth, an architect, noted:

> The [architectural] profession was on the verge of major changes to traditional building procurement methods when I commenced my tertiary studies in the late fifties. 'Design and Construct' was introduced by Lend Lease and Civil & Civic. 'Project Management' followed soon after. Since then, many new forms of building procurement have been tried and technology has changed. Progressively, incrementally, the influence of the architect has been reduced. (sub. DR437, p. 1)

Not only have architects faced increasing competition from non-design specialists, such as builders and project managers, in relation to their role in the building process, but they have also faced greater competition within their specialist field of expertise, building design, from non-architects. Large construction companies that have design or architectural divisions, such as Lend Lease, also compete with architects for work on larger projects. In addition, architects face competition from providers of building design and related services from other countries, for example, as occurred for the Federation Square and National Gallery projects in Victoria.

The Commission is not aware of any data on the extent of competition between architects and non-architects in relation to higher-value, compared with lower-value, commercial and industrial building projects. However, an RAIA study

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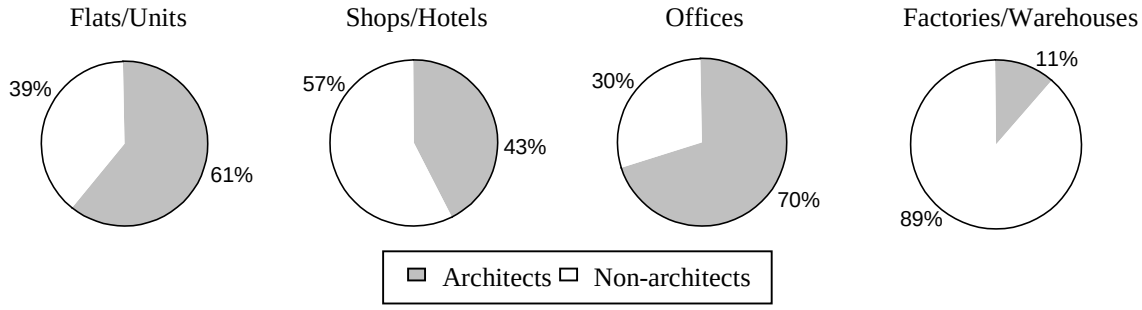
30 For example, the study does not provide data on the procurement arrangements used for projects where architects only provide pre-construction services such as design and documentation.

31 As discussed previously, it is common on those residential projects where an architect is employed to provide design services, for the architect also to provide a full range of traditional services including contract administration. As most residential projects involving architects employ traditional procurement arrangements, responses from architects working in the residential sector in the survey may partly explain the high proportion of traditional contracts used to engage architects in the construction process.

of businesses undertaking 'project designer' work in the commercial and industrial sector sheds some light on competition within this sector.

The study found that, in 1992-93, architects accounted for a significant proportion of project designers for selected commercial project types but only a small proportion of industrial project design in Australia (RAIA 1993).[32] Specifically, architects were the project designer for 70 and 61 per cent of the value of office construction, and flats/units construction, respectively, and 43 per cent of shops/hotels (figure 3.8). However, architects were involved as project designer for only 11 per cent of industrial sector factories/warehouses. Information from participants suggests that these proportions are unlikely to have changed significantly since 1992-93.

Figure 3.8 **Architects as project designers for commercial and industrial projects, Australia, 1992-93[a]**



a Proportion of architects and non-architects who were recorded as being the 'project designer' on non-residential building applications for projects valued at $100 000 or more, in 1992-93. Applications may include some public sector applications. Figures are indicative only because architects may include those working as 'architects' who are not registered under an Architects Act.

Data source: RAIA (1993).

Public sector

In 1998-99, the value of public sector building commencements for all levels of government in Australia was $3.6 billion, 11 per cent of total building commencements. Non-residential projects, such as schools, comprised the majority (80 per cent) of public sector building activity (ABS 2000).[33]

32 The RAIA analysed all businesses that recorded being the project designer on non-residential building applications for projects valued at $100 000 or more, in 1992-93.

33 The remaining 20 per cent is residential building activity, including new houses, renovations and alterations to residential buildings.

At the Commonwealth level, a large proportion of building activity tends to be undertaken by a relatively small number of agencies. These agencies include CSIRO, the Department of Defence and the Australian Broadcasting Corporation.

State and Territory Governments commission a diverse range of projects including health facilities, schools and correctional facilities. The number of agencies involved in building activity varies across jurisdictions. In some jurisdictions a particular agency may have responsibility for a wide range of building activity. For example, in Western Australia, the Department of Contract and Management Services is responsible for commissioning building activity for the justice, health and education portfolios. However, in Victoria, each individual portfolio tends to manage its own building programs.

Local Governments are also directly involved in commissioning building activity, including recreational facilities, such as swimming pools and sports centres, and community centres.

Anecdotal evidence suggests that public sector agencies employ architectural practices of all sizes (from sole practitioners to large practices), and there appears to be some correlation between the size of the project commissioned by the agency and the size of the architectural practice contracted.

Information provided by participants suggests that architects have a substantial share of the market for building design and related services in the public sector. Public sector agencies appear to give preference on a significant proportion of projects to architects, rather than non-architects, not only for design services, but also for other services, such as contract administration and project management.

Public sector agencies, at all levels, now rarely maintain permanent in-house architects (or non-architects) for the purpose of providing building design and related services. They tend to engage consultants by competitive tender to provide the required services.

The preference of public sector agencies for architects over other providers of similar services is evident in some tender documents that specify architects in the requirements. It is also evident in some of the tender processes used by public sector agencies to allocate contracts for building projects. Several participants suggested that the tendering processes —such as pre-qualification systems — used by public sector agencies to engage providers of building design and related services made it difficult for non-architects to obtain public sector work. The BDAA noted:

> … the pre-qualification lists of consultants exist, either deliberately or non-deliberately, and as a result of that our membership, where they have obvious competencies … get a small minority of government-sponsored work. (trans., p. 373)

Pre-qualification is a system commonly used by public sector agencies as part of the tender process. Pre-qualification involves identifying a group of service providers who meet specified criteria relating to qualifications, experience and fees, and then awarding contracts to service providers within that group. For building design and related services, for example, public sector agencies may maintain pre-qualification categories for architects and project managers. For design services, many public sector agencies only choose consultants from the architects pre-qualification category.

In Western Australia, the Department of Contract and Management Services maintains two pre-qualification categories for architects: one for projects below $500 000 in value, the other for projects valued between $500 000 and $3 million. A public tender process is used to select architects for the two categories based on the fees the architects charge, their qualifications, areas of expertise and experience. Building projects are then awarded to the appropriate pre-qualified architects. On the majority of projects, architects oversee the construction activity as well as providing the design services. For building projects above $3 million, the architectural firm is selected from a public tender process. (Department of Contract and Management Services, pers. comm., 23 March 2000).

Similar systems are also used in some Local Government agencies. The Yarra City Council in Melbourne, for example, selects by tender around 10 architects every three years to design and oversee the Council's building activity.[34] Once selected, architects bid for projects as they arise during the three-year period. The Council generally limits its pool of building design and related service providers to these architects (Yarra City Council, pers. comm., 22 March 2000).[35]

Non-architects were most likely to be involved in public sector projects of very high value, where agencies may employ non-architects as specialist service providers in project management roles. Moreover, participants noted that non-architects also were likely to be involved in lower-value public sector projects because some agencies commissioning these projects may not restrict applicants on the basis of pre-qualification systems, thereby allowing competition from non-architects. In some regional areas, non-architects may have a greater share of the market than in urban areas because public sector agencies often have a preference for employing local service providers.

34 For large or complex projects the Council may use an open tender process to engage architects.

35 The Council has selected one project manager as eligible to be employed by the Council, but has yet to commission a project that requires the services of a project manager.

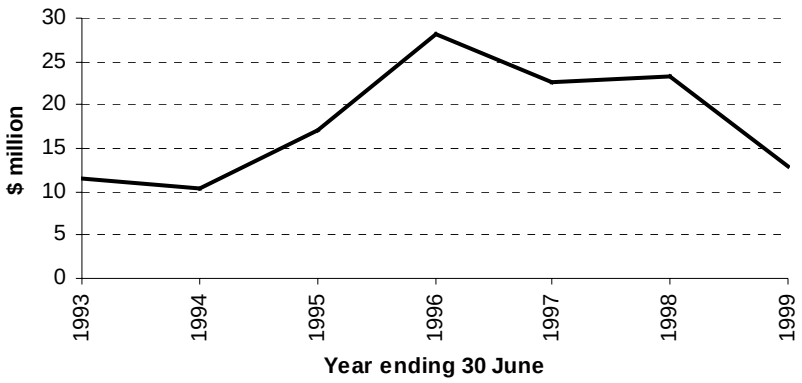
The BDAA commented:

> There is anecdotal evidence suggesting that only a small minority of building designers are successful in winning government tender work. Such successes where they exist, tend to be in regional areas where market information re competencies is more easily accessible and where established relationships and networks are perhaps more highly regarded. (sub. DR440, p. 3)

Exports of architectural services

In 1998-99, the official value of Australian exports of architectural services was estimated to be $13 million (figure 3.9).[36] Exports of architectural services have declined since 1995-96, their share of the total value of architectural services being approximately 1.5 per cent in 1998-99.

Figure 3.9 **Exports of architectural services, Australia, 1992-93 to 1998-99[a]**



a In constant 1998-99 prices.

Data sources: ABS (*Balance of Payments and International Investment Position, 1998-99,* Cat. no. 5363.0; *Australian System of National Accounts,* unpublished data, Cat. no. 5204.0).

However, this may not be an accurate indication of the export value of architectural services (that is, services provided by individuals or businesses registered under the various Architects Acts) because the ABS data include exports of a number of services that can be provided by non-architects, such as architectural drafting, landscape architecture and town planning. On the other hand, the ABS data exclude some services, such as project management services, which are provided by architects.

36 Architectural services: Australian and New Zealand Standard Industrial Classification (ANZSIC) 7821.

Despite the data, several participants observed that exports were a significant, and growing, source of revenue for some Australian architects. For example, the Board of Architects of New South Wales noted that '22 per cent of all architects fees earned in Australia by those insured through the RAIA Insurance Brokers Ltd is derived from overseas commissions' (sub. 35, annexure B, p. 40).

RAIA Insurance Brokers (a trading division of Insurance Brokers Limited) confirmed that the figure cited by the Board related only to sole practitioner architects and architectural businesses insured with it, and not all Australian architects. RAIA Insurance Brokers also noted that the figure cited by the Board related to 1996-97, and although the proportion of fees earned overseas by architects had declined since then to around 14 per cent (as a result of the Asian economic crisis), the proportion recently had risen to almost the 1996-97 level (RAIA Insurance Brokers, pers. comm., 25 January 2000).

The RAIA survey of architects indicated that only 14 per cent of respondents were involved in export activity in 1997-98 (RAIA 1998). In order to reconcile this with the RAIA Insurance Brokers figure, these respondents would need to comprise very large practices earning significant export income.

The Department of Foreign Affairs and Trade (DFAT) supported the view that only a small number of architectural practices are involved in the export of architectural services, commenting that 'there is considerable scope to increase exports of professional services given the small number of Australian firms currently engaged in export activity' (sub. 146, p. 1).

Exporting to Asia appears to be an important part of some architects' revenue, with the potential for future expansion, particularly for medium-to-larger-sized practices. Of those architects that responded to the RAIA survey and were involved in some export activity in 1997-98, approximately 65 per cent exported to South-East Asia. Oceania, other Asian countries and Europe/United Kingdom were the next most common export markets.

DFAT also emphasised Asia as an important destination for exports:

> The Australian architectural profession has identified Indonesia, Malaysia, Singapore, Hong Kong and Thailand as their key markets in Asia. China, Vietnam and the Philippines have been identified as emerging growth markets. (sub. 146, p. 1)

4 The case for regulation

The terms of reference require the Commission to identify the public interest rationale (if any) for legislation regulating architects. In this chapter, possible justifications for regulation of architects are canvassed. The extent to which current legislation promotes public interest objectives is discussed in chapter 5.

4.1 Introduction

There has been a long history of formal and informal regulation of the professions, dating back to the guilds of the Middle Ages in Europe (Benham 1980). However, as noted in chapter 2, architects in Australia have only been regulated formally under the various State and Territory Architects Acts since the 1920s.

Although not explicitly mentioned in the objectives of the various Architects Acts (chapter 2), protecting the public interest has been presented by participants as the primary objective of the Acts. The Architects Accreditation Council of Australia (AACA) noted:

> The purpose of any legislation is to serve the public interest. In the case of Architects Acts the particular service is the protection of the public, as individuals and as a community, from the consequences of failures associated with the provision of architectural services by those who do not possess the appropriate standard of education, experience and professional conduct. (sub. 55, p. 11)

Participants presented a range of specific public interest justifications for the regulation of the architectural profession, in terms of protecting both the direct consumers of architectural services and the interests of the wider community. In all cases, the public interest was discussed in terms of the benefits of the legislation that accrue to those other than the architects themselves.[1]

Information problems confronting the direct consumers of building design and related services were highlighted as a major public interest issue. In particular, it was suggested that consumers might lack information about the services they are

[1] Although it is not impossible that promoting the interests of architects also promotes the public interest, the public interest requires an assessment of the effects of legislation on all groups in the community, with the interests of no particular group taking precedence.

about to purchase. The RAIA suggested that there is an:

> … asymmetry of information amongst consumers regarding the importance of design consultant input … causing them to make decisions which, while apparently economically rational, are demonstrably to their detriment. (sub. 16, p. 16)

The information and standards provided by architects legislation were also seen as vital in encouraging exports of architectural services and attracting overseas students to Australian universities. With regard to the importance of fostering export markets, the RAIA commented:

> Consumers in offshore markets would be significantly disadvantaged in assessing the expertise of Australian architects in comparison to those from countries which require registration of architects under Architects Acts or similar legislation, with consequent disadvantage to Australian architects active in the world market for architectural services. (sub. 16, p. 24)

Further, the University of Melbourne suggested:

> An Architects Act helps Australia's profile as an exporter of architectural services and facilitates the recognition of this course as a provider of architectural education to overseas students. (sub. 65, p. 11)

However, the public interest goes beyond simply providing information to direct consumers, either of architectural services or education. The 'end product' resulting from the provision of architectural services is, by its very nature, in the public domain. Among the 'third party' effects are the health and safety consequences of faulty design and construction. However, as noted by the AACA, these effects go:

> … beyond the health and safety aspects … The public interest … involves the broader amenity of the community and involves the nature and sustainability of the urban environment. (sub. 55, p. 3)

Further, a number of participants noted that today's buildings leave a legacy for *future* generations, a legacy that may not be considered by today's purchaser of architectural services. Curtin University of Technology commented:

> Architecture and Urban Design are the most lasting and telling artifacts of any culture. If we wish that our culture be well regarded by future generations, then we must ensure that it is in the stewardship of those best educated and trained to deal with it. (sub. 128, p. 1)

4.2 When is regulation warranted?

Under the terms of reference, if regulation that restricts competition is to remain, it must be demonstrated that the benefits outweigh the costs, and that objectives cannot be better met in an alternative way. Assessing the benefits and costs requires

consideration of social, cultural and environmental impacts of regulation, as well as economic effects (chapter 1). In other words, all benefits and costs, economic and non-economic, tangible and intangible, must be taken into account.

The underlying principle of the Competition Principles Agreement is that competition promotes optimal outcomes in a market in terms of innovation, efficiency, prices, quality and consumer choice. However, it is recognised that there are circumstances when markets may not generate optimal outcomes, and government intervention may be justified to promote the public interest. Typical examples of these circumstances, often termed 'market failure', include:

- existence and abuse of monopoly or market power;
- when a party to a transaction has incomplete information (information asymmetries or deficiencies); or
- when the parties to a transaction do not account for the full effects of their actions on others (spillovers or externalities).

The last two categories are of relevance in this inquiry, and are explored below. It is unlikely that, if unregulated, the market for architectural services would be monopolised.[2]

4.3 Incomplete information

In virtually all economic transactions, consumers do not have complete information about the attributes or quality of the product or service that they are procuring, and typically have less information than the seller. In the economic literature, this imbalance is referred to as an 'information asymmetry'. Given this asymmetry, there is a possibility that consumers may experience problems because of the incompetence or impropriety of sellers of goods and services, or through genuine communication breakdowns between them and the sellers.

2 Industries that may be monopolised tend to be characterised by significant economies of scale or natural advantages that give incumbents cost advantages which effectively prevent new entrants to the market. This does not seem to be a characteristic of the services provided by architects. Although very talented architects may earn significant fees, this does not prevent others competing against them, or operating in different segments of the market, as currently occurs. Nonetheless, some participants (such as Col Bandy (trans., p. 501)) suggested that, without regulation, smaller practices, which constitute the majority of architectural practices, would have far more difficulty labelling themselves than larger practices, and could suffer as a result (chapter 11).

The source of the problem is that information is either costly to obtain or, in some cases, cannot be obtained, given the inability of the buyer to measure *ex ante* the attributes of some goods or services.

- Consumers may not be able to identify the attributes of the product or service before purchase, without a significant amount of search.
- Consumers may not able to assess the true quality or attributes of the good or service until after it is consumed. That is, they may only learn about the qualities of the good or service through experience.
- Consumers may not be able to judge readily the quality of the service, even after the purchase. Problems may only surface over time and be difficult to attribute to the original work. And if the provider of the service is also the provider of information about the consumer's needs, the consumer needs to place trust in the reliability of the provider.

The need for search and experience is relevant to some extent for most goods and services. Trust may be particularly important in markets for services where consumers may be unsure about the exact standard of service required, and the 'diagnosis' is often undertaken by the service provider (the typical situation in the case of professional services, as discussed below).

Information problems potentially can decrease community well-being because they may distort the quality, price and quantity of goods and services provided in the market. For instance, if consumers are uncertain about quality, they may decrease the amount they are willing to pay for a good or service, which in turn reduces the price, quality and quantity of goods consumed in a market — the Akerlof 'lemons' problem (Akerlof 1970).

The possibility that information asymmetries prevent otherwise mutually beneficial transactions occurring provides one rationale for government intervention in a market. However, the need for government regulatory intervention does not immediately follow from the identification of information deficiencies: information deficiencies are pervasive yet most markets continue to function reasonably efficiently. In some cases, the consequences of incomplete information are insignificant. Where the potential harm is significant, there are various means to reduce risks. Rottenberg noted:

> It does not appear that competitive markets in the real world serve consumers as badly as the informational asymmetry model suggests they do. Therefore, it does not follow that apparent informational asymmetry should be optimally adjusted for by state enforcement of standards of quality and competence … (Rottenberg 1980, p. 7)

Even in the professions, where information asymmetries exist almost by definition, solutions can arise in the market itself. Indeed, as discussed below, the 'professions'

have developed precisely because consumers cannot obtain the specialised knowledge of the professional for themselves, without considerable cost, time and/or inconvenience.

Thus, in assessing the need for government regulation to overcome information deficiencies in the market for building design and related services, there is a need to identify the asymmetries, any 'market' solutions which may eventuate, the extent of any residual problems the asymmetries could create, and the costs and benefits of the regulatory solution.

The professions and information deficiencies

As noted above, the provision of professional services, such as architectural services, generally is characterised by a high degree of information asymmetry. Consumers rely on the professional to:

- identify the precise nature of the task;
- determine the best way to undertake it; and
- provide the services needed to ensure the task is completed.

There are a number of opportunities in this relationship for misunderstandings and/or unethical behaviour. The provider may have an incentive to recommend unnecessary services (or a higher standard than required), or provide a lower standard than is optimal (and agreed), particularly where the consequences of poor service may not become apparent for some time. Due to the difficulty, even infeasibility, of specifying quality precisely, not all aspects of the service can be contracted, so an *implicit* (unwritten) contract exists between provider and client, predicated on trust. Indeed, trust is the defining characteristic of the client–professional relationship.

A number of mechanisms can emerge naturally to address the problems of information asymmetries. Consumers can research the credentials of providers. Moreover, profit-seeking sellers, driven by competition from other providers of similar services, have an incentive to try to maintain or create a market for their professional service — devising ways to signal their quality and reliability to consumers is critical to this. Such methods may include warranties and guarantees, and the use of independent certification agencies (box 4.1).

Membership of a professional organisation which imposes minimum qualification requirements and a code of conduct or ethics is another way of signalling to the consumer the reliability, ethics and standards of the service provider. The code may provide some assurance that the professional will be competent and hold the client's

interest above any opportunity to achieve unscrupulous financial gain, and that the professional will be competent and diligent in providing the service.

Box 4.1 **Non-statutory responses to information deficiencies**

Consumers may be able to undertake research to overcome information deficiencies. Indeed, in most circumstances, consumers will undertake some search. The perceived benefits of search (and, hence, the willingness of consumers to undertake it) are likely to be greater where the service is a non-standard one (that is, consumers desire a differentiated service), and/or a substantial financial outlay is involved.

The ability of consumers to search is related to the costs of doing so, and the time available to make a decision (the urgency of the service). Costs will be highest where there is a large variance in the quality of service providers, a large degree of skill is required to evaluate the service, and there is little ongoing contact between service provider and consumer (Moore 1961).

A variety of mechanisms has developed to assist consumers in their search task.

- Providers may develop a *reputation* for good work. This can develop either through the direct experience of consumers (where repeat purchases are likely) or through word-of-mouth (recommendations of family and friends). Large firms and brand names also may act as signals of reliability (by indicating the seller's ability to maintain long-term customer relationships).
- *Professional associations* may develop to signal the reliability and ethics of service providers. These associations may form the basis of a self-regulation model. In this setting, associations may be involved in setting and maintaining the standards of their members through qualification requirements and codes of conduct, as well as devising methods of differentiating the service of their members from those of other providers and/or associations — a 'labelling' or certification function. Self-regulating professions also may be involved in accrediting courses and operating professional development programs.
- *Warranties or guarantees* may be offered by sellers to signal the quality of their products or services. These can be useful when quality is not easily assessed before purchase, but there are measurable performance standards.
- *Independent certification agencies* may endorse certain service providers as being 'approved'. This only works effectively where the endorsing agency is itself considered by consumers to be reputable and credible.

Hence, the professions and professional associations can be seen as having developed as a way to certify and, thus, signal the standards of service providers, where this cannot be specified adequately through the contractual process.

Although professional associations can (and often do) coexist with government regulation, the professional association also can form the basis of a self-regulation model. The Council of Australian Governments noted that, in some cases, codes of

conduct may be 'useful *alternatives* to statutory regulation, and transfer the administrative costs from the public sector regulators to industry participants' (COAG 1997, p. 62, emphasis added).

Possible statutory responses to information asymmetries

Non-statutory solutions alleviate information asymmetries, but they will not remove them entirely. Indeed, it may not be optimal to eliminate information asymmetries. As noted by Barzel:

> The problems and costs of measurement pervade and significantly affect all economic transactions. Errors of measurement are too costly to eliminate entirely. (Barzel 1982, p. 48)

Crucial to determining the community's tolerance for information asymmetries (and, hence, assessing the sufficiency of market mechanisms or the preferred type of government regulation) is the potential harm that could result from a decision based on incomplete information.

In broad terms, government intervention might be justified where the information asymmetry cannot adequately or efficiently be remedied by non-statutory mechanisms *and* the potential harm is significant.

In assessing the potential harm, there must be consideration not only of the potential consequences of a decision based on incomplete information, but also on the likelihood of that outcome occurring, and whether it could be remedied appropriately and effectively (for instance, financial redress may be seen as an appropriate remedy for financial loss, but not for death or serious injury).

In addition, to determine an appropriate regulatory response for a particular profession, such as architects, the specific source of any potential harm needs to be isolated. This includes identifying the extent to which the profession in question is responsible for, or has control over, the different areas of risk. Doing this helps to clarify exactly where non-statutory responses may be inadequate, and enables government to target the statutory response to satisfy regulatory objectives. However, as with non-statutory responses, regulation can at best only reduce, not eliminate, information asymmetries and the risk of harm.

The main statutory options include regulation of performance (which focuses on the outputs produced by the profession), and regulation of inputs (regulating the profession itself, through mechanisms such as registration, certification and licensing) (box 4.2).

Box 4.2 **Statutory responses to information asymmetries**

- *Enforcing quality standards on outputs* through codes and laws is one way of trying to address the issue of quality in markets for professional services. The focus on outputs could be more effective where the role of particular inputs (and occupations) changes, but certain objective output standards need to be maintained. However, enforcement costs may be high and it may be difficult to set standards at appropriate levels (Wolfson, Trebilcock and Tuohy 1980). Thus, quality standards might be best used where the product or service provided by the professional is amenable to the setting of objective, measurable standards and the potential harm is significant. Building codes are an example of this type of regulation.
- *Registration* involves the maintenance of a list (a central registry) of those engaging in and 'qualified' to provide a particular service (Friedman 1962). It usually is distinguished from certification and licensing by the fact that standards required for eligibility tend to be much lower (perhaps nothing more than having a registered business number, and paying an annual registration fee). Registration does not necessarily involve a restriction on the use of title. Given the minimal requirements for registration, it may be appropriate where there is a potential for information asymmetry (since it provides some minimal information to consumers) but the harm is not particularly significant.
- *Certification* involves the reservation of a title to persons who have met certain educational and training requirements, considered to indicate a minimum level of competence (Wolfson, Trebilcock and Tuohy 1980). (The Architects Acts provide a form of statutory certification system.) Requirements for certification tend to include formal education, as well as postgraduate training and experience. There also may be ongoing requirements, such as adherence to codes of conduct or compulsory professional development. Others can compete with the 'certified' group, but may not use their title. There may be anti-competitive effects if some competent providers are restricted from using the appropriate title. Certification can assist consumers to distinguish among groups of providers, while giving them the ultimate choice about desired quality. However, certification cannot fully protect consumers from allegedly incompetent providers since uncertified providers can be chosen. Certification can be provided without statutory backing. The advantage of non-statutory certification is that the certifying body faces competition and is driven to provide standards that meet consumer needs.
- *Licensing* restricts the performance of certain tasks (practice) to those with certain qualifications. Potentially, licensing can play a more significant consumer protection role than certification. (Wolfson, Trebilcock and Tuohy 1980) However, licensing, if it constrains entry to the profession, decreases competition in the market, and therefore is likely to increase prices to consumers. It also may be used as a vehicle by the profession to raise entry barriers beyond those needed to benefit the community. Given these tendencies, licensing should only be used where there are significant information asymmetries and the potential harm is significant. In addition, as with certification, for licensing to be effective, there must be a direct link between licensing requirements (input standards) and output (service standards).

The distinctions made between registration, certification and licensing are based on their potential effects on the supply of service providers and, hence, on competition. Architects Acts provide a form of statutory certification system.

All regulatory options involve a trade-off between the potential benefits of regulation and its costs. The more restrictive the regulation, the greater the costs tend to be (and hence the greater the benefits it needs to generate to deliver net benefits). For instance, licensing of one group of providers eliminates competition from other groups who might otherwise perform similar functions. The negative effects of the reduction in competition, including increased prices and reduced consumption, may exceed the potential harm the regulation was intended to address. This trade-off must be considered when assessing the net benefits of regulation.

4.4 Information problems in the market for building design and related services

Participants highlighted a number of information problems that consumers may face in the market for building design and related services. The RAIA noted:

> … the inexperienced and uneducated consumer does not have the ability to determine the appropriate cost and quality trade-off when purchasing complex architectural services. (sub. 16, p. 19)

While Michel Greenhalgh, an architect, stated:

> … the average Client would not know whether they were getting the right level of skill and expertise for their project. (sub. 15, p. 1)

The degree of information asymmetry in this market is likely to differ according to the type of consumer. Many consumers in the commercial and government sectors are frequent users of building design and related services, and have the resources and knowledge to research and evaluate the merits of providers of these services. However, this may not always be the case. For instance, Hames Sharley, a multi-disciplinary architectural practice, noted:

> You'd be surprised at the number of times where we've dealt with a major public hospital who is going into a major health facility and they don't have the backup of an organisation like the Department of Contract and Management Services. They don't have a very good perception of how to choose an architect or what they should be asking for. (trans., p. 37)

While there may be exceptions, many participants suggested that the 'inexperienced and uneducated consumer' tends to be more prevalent in the residential and lower-value commercial sectors of the market. In these sectors, 'clients are more likely to be occasional users of design and construction services' (University of Melbourne,

sub. 65, p. 3) and consumer 'access to expert advice is limited through financial constraints' (Architects Registration Board of Victoria, sub. 72, attachment 1, p. 19).

Nevertheless, even for the relatively small group of individual consumers who directly hire providers of building design services in the residential sector (chapter 3), the decision to procure these services is not usually an urgent one. This means that even infrequent users may have the time (and incentive, given the size and importance of the purchase) to undertake some research into the credentials of potential service providers. The reputation of providers is likely to play an important role. Recommendations from family and friends are the first information source for many people, and may act as a screening device. Consumers can (and do) look at previous work performed by the architect (or building designer) as another way to check credentials. This can be done either by site inspection, viewing a folio of work, or by looking in publications that feature work of architects (or building designers). David Manfredi, an architect, noted:

> It's our experience and I think it would be fair to say that a lot of architectural work is gained by a firm similar to our size, and certainly bigger firms, by word of mouth. It's by reputation. By people looking at the buildings and saying, 'I like that style,' … and coming to the architect as a foot in the door, so to speak … I wouldn't select an architect out of the Yellow Pages if I was the public … (trans., p. 187)

Improvements in telecommunications, and, in particular, the advent of the Internet, also are likely to have reduced the costs of obtaining information.

Despite the range of available information sources, some information asymmetry inevitably will remain. Again according to David Manfredi:

> … any firm is not going to spend endless amounts of time trying to win that client over by padding out their CV, so to speak, so a client is only going to have so much information in front of them at any one time to make a decision. (trans., p. 190)

The potential for harm in the market for building design and related services

There are a number of sources of potential harm in the market for building design and related services. These include the financial and commercial, design aesthetics and functionality, and health and safety aspects of the construction. A number of participants pointed out that design involves much more than aesthetics and functionality. For instance, Dennis Silver, an architect, noted that design includes:

> … not only the visual artistic content of building but competent documentation and contract administration to ensure the result is of quality Architectural construction and content. (sub. DR438, p. 3)

The Commission acknowledges and accepts this broad view of design. However, in identifying the sources of risk, an attempt has been made to isolate the particular aspects of design that could generate specific types of risk. The residual design risks (those that do not directly generate financial or health and safety risks) then refer to 'design aesthetics and functionality'.

The significance of each of these sources of risk, and the degree to which they can be overcome by various market mechanisms, is likely to differ across projects and market sectors.

Financial and commercial risks

Any significant problems in construction can have potentially very serious ramifications, ranging from a loss of a property to the bankruptcy of a company.

Participants noted that financial risks stem from a number of possible factors, including the quality of the budgeting process and of documentation. The AACA submitted:

> … the risks are associated with the financial consequences of poor quality documentation which can lead to inflated tenders by builders so as to cover for the unknowns. (sub. 55, p. 21)

The RAIA argued that the potential harm was likely to be greatest in the higher-value end of the market:

> … in the detached housing sector … projects tend to be simpler and more repetitive … The potential for harm on an individual project in terms of economic loss … is relatively low …
>
> [Major building projects] are typically large and complex and their individual value is high … The potential for harm in terms of economic loss … on an individual project basis, both during construction and following completion, is of major significance. (sub. DR441, p. 8)

Although this may be the case, the capacity of consumers in the higher-value end of the market to bear a financial loss also is likely to be higher. In addition, as noted above, assessing the potential harm not only involves considering the possible consequences but also the likelihood of particular outcomes occurring. Where consumers are better able to access and process information (as is likely in the case of larger projects), the likelihood of harm diminishes. Hence, the potential harm in the higher-value end of the market may not necessarily be greater.

Considering both the magnitude of the possible harm and the likelihood of it occurring, consumers in the residential market are likely to be at the greatest risk of financial harm. As infrequent purchasers, they have less knowledge about whether a

proposal can reasonably be expected to meet its budget. This creates the potential for service providers initially to underestimate both time and cost to secure work (either deliberately or through incompetence), resulting in apparent cost 'blow outs'. The less informed, one-off consumer also may be less likely to understand the importance of quality documentation and what exactly constitutes 'good' documentation. Hence, they may not be willing to pay more for higher quality documentation, even though such documentation could save them money in the long run.

Various mechanisms have evolved to help control for the financial risks faced by consumers, in particular, the contracting process itself. For example, 'design and construct' contracts have emerged in the commercial sphere, which allow owners to contract directly with builders (William Curnow, sub. 145). William Curnow, an architect, argued that, in part, this was a response to cost overruns that may have been caused partially by the incentives generated by 'percentage cost' contracts, which specified consultant architects' fees as a percentage of construction costs. In the residential sector, housing construction companies offer 'off-the-shelf', fixed-price project homes. Penalty clauses also have been used to encourage construction deadlines to be met. The development of standard contracts, often promoted by professional associations, has facilitated the contracting process for those who may otherwise find it difficult to negotiate suitable contracts.

Participants noted that these contractual remedies do not eliminate all financial risks. For instance, Greg Snedden, an architect, commented with respect to 'fixed price' contracts:

> It is usually only after the sales/building contract to build the home has been signed that the buyer discovers the extra costs associated with footings and associated site preparations. (sub. DR432, p. 4)

Nonetheless, these contractual remedies go some way to mitigating financial risk, even if they do not eliminate it. Governments underpin these contractual market remedies via the judicial system. This approach provides for financial redress for a breach of contract, which is broadly commensurate with the type of loss incurred. Governments also provide fair trading laws, which prohibit misleading and deceptive conduct and provide for consumer redress outside the court system. In some States, Building Acts also impose compulsory indemnity insurance for all building practitioners. Whether there is scope for an additional role for government to implement regulations, such as Architects Acts, aimed at preventing financial harm, is considered in chapter 5.

Health and safety risks

The health and safety risks of a construction may be separated broadly into two categories: 'structural safety' (whether the building is structurally sound) and 'internal design safety' (whether the building is safe to inhabit in terms of appropriate ventilation, lighting etc).

The structural integrity of a construction is crucial in ensuring the health and safety of its users. The consequences of errors in this regard are potentially extremely serious. If a building collapses, there is a high risk of death, or at the very least, serious physical injury.

As far as internal design safety is concerned, the Architects Registration Board of Victoria stated:

> Safety is a primary consideration in a building, whether through faults in design or construction which might expose users to danger (eg, stair treads too shallow) or through misapplication of sound principles (eg, reversing hot and cold taps, exposing users to danger when reaching past the hot tap) … (sub. 72, attachment 1, p. 9)

Although the consequences of faults in some of these aspects can be less severe than structural faults, in some cases, they also can be life threatening, for example through incorrect design of ventilation or sprinkler systems, fire exits etc (RAIA – WA Chapter, trans., p. 9). Both structural and internal design safety faults may become apparent only gradually over time.

Compounding the severity of the potential harm is the fact that many consumers (especially in the residential and lower-value commercial sectors) are not in a position to assess the structural integrity of construction, and there is no reasonable way for them to educate themselves to do this. Consumers may be able to assess some internal design faults more easily. However, faults with some internal design features such as fire exits may only become apparent after an incident where they are needed, in which case, faulty design could have very serious consequences.

Nonetheless, there are mechanisms that diminish the risk of harm. Purchasers can access independent expertise. If buildings collapse or have serious safety faults, those involved in its construction are likely to develop reputations for poor work, and their businesses are likely to suffer as a result. Warranties on the structural integrity of buildings also may be offered to signal to consumers the quality of the service provider.

However, these market solutions do not eliminate health and safety risks. Those risks that remain may not be acceptable to the community, given the severity and irreversibility of the potential consequences. The costs of 'learning by experience'

can be very high. In addition, although contract and tort law may provide for financial compensation for death or injury, and criminal penalties may be imposed on those found guilty of negligence, this may be perceived as inadequate protection or compensation. In response, governments have implemented building and safety codes that stipulate minimum safety standards. The extent to which the Architects Acts might further enhance consumer protection is analysed in chapter 5.

Risks arising from design aesthetics and functionality

The building design practitioner is chosen to create a design capturing the consumer's aesthetic and functional needs. The type of service consumers seek is, therefore, very personalised and specific. Given its importance, the cost of inappropriate design could be high, both financially (if costly adjustments need to be made after initial construction, for example) and in non-financial terms (living with an 'imperfect' design, for example).

A number of factors diminish risk in this area. First, consumers do not seek a standard service when hiring a building design practitioner. Given this, most consumers undertake research (look at the designer's previous work, for example) to find a provider whose design style meets with their tastes and needs. Service providers also signal their competence — through professional associations, for instance. Second, the design process is iterative and interactive — even after a designer is chosen, there is usually time in the planning and drawing process to discuss and adjust plans before (and during) construction (though it may not always be easy for clients to visualise a construction from a plan).

Thus the scope for harm occurring in this area can be limited by measures taken by market participants themselves. If problems do occur, the ability of regulation to help seems restricted to contract or tort law provisions for financial redress for costs incurred in rectifying design faults — an *ex post* solution. If government can provide a 'screening device' (such as that provided by Architects Acts), this may help lower the time and financial costs to consumers associated with the initial search for a provider. The critical test will be whether government can offer better information, and/or offer information more efficiently, than the market.

FINDING 4.1

Information deficiencies exist in the market for building design and related services, particularly for individual consumers who purchase these services infrequently. Although various mechanisms operate to correct many of these deficiencies, in some aspects of the provision of building design and related services, including its financial and commercial, design aesthetics and functionality, and especially health and safety aspects, the market and general legal remedies alone may not sufficiently

address community standards. Government intervention in some form therefore may be justified, provided the benefits of such intervention can be demonstrated to outweigh the costs.

Information and international issues

It seems reasonable to suggest that information deficiencies may be greater for overseas consumers than for domestic consumers. Overseas clients, like Australian clients, are likely to select architects based on proven expertise, so will perform some research into the credentials of providers. However, Australian educational qualifications may be difficult for these consumers to assess, given that they may not be aware of the standards of the institutions or course content. Furthermore, reputations earned for work done domestically may not be easily conveyed to overseas clients.

That said, Australian companies often have contacts, as well as reputations, in overseas markets. The search costs for overseas consumers would be higher relative to domestic consumers only in cases where contacts or reputations do not exist.

Information asymmetries (with regard to the quality and content of courses) also may be more significant for prospective overseas students, than for domestic students. As discussed in chapter 6, a number of factors are likely to influence a student's choice of tertiary institution, including fees, distance from home, and quality of the course and teaching staff. To the extent that accredited Australian courses comply with accepted international standards, search costs for overseas students may be diminished, although not eliminated.

Even if information deficiencies were not significant, to the extent that laws in other countries *impose* requirements on foreign 'architects' to be registered in their country of origin, Australian architects who want to export will have to meet those requirements. These requirements also may affect the decision of overseas students as to their preferred country of study (that is, they may be discouraged from studying in Australia if they believe the qualifications earned here may not be recognised internationally). However, although exports earn income for Australia, this additional income must be compared with any costs imposed on the domestic market by the certification system. Whether current regulation is the best or only way to meet these overseas requirements is discussed in chapter 6.

4.5 Spillovers (externalities)

In making decisions, consumers and producers tend to consider their personal costs and benefits, not the costs or benefits to others. Yet many consumption or production decisions affect people who are not direct parties to the transaction. These are known as spillover or externality effects.

Spillovers can be either positive (that is, they benefit those who are not parties to the transaction) or negative (that is, they have detrimental effects on those who do not participate directly in the transaction). In the case of positive externalities, there may be an underprovision of the goods, services or activities, which generate the externality, relative to the 'social optimum'. Negative externalities can result in overprovision. But, as with information deficiencies, the mere existence of spillovers does not *of itself* justify government regulatory intervention.

Externalities are pervasive — almost every private action affects others. But it is not generally efficient to eliminate all negative externalities or promote infinitely large quantities of positive externalities. In many cases, externalities do not create significant problems. Where action may be warranted, the spillover problem can be mitigated in a number of ways.

Assessing the need for government regulation to overcome spillovers requires identification of the spillovers, any market solutions which may arise, and the costs and benefits of any further regulatory action. Where government intervention is warranted, maximising its effectiveness generally will require that it addresses the problem in the most direct way.

The professions and spillovers

The provision of professional services often involves spillovers. Some non-statutory mechanisms can develop to address any potential problems. For instance, some solutions may arise as a matter of convention or custom (manners or etiquette, for example). In addition, consultations and negotiations between the party generating the spillover and other affected parties may result in modified behaviour of the generator of, or compensation of those affected by, the spillover. This approach works best when externalities have localised effects (for example, on neighbours), and negotiation among affected parties is feasible.

However, especially where there are large numbers of people involved and negotiation is difficult, and where the effects of the externality are significant and possibly long term, government intervention may be justified, provided the benefits of intervention outweigh the costs. There are a number of ways that this could be

done, involving either the regulation of inputs (such as professions) or regulation of outputs (via subsidies or taxes, quotas or quality restrictions) (box 4.3).

Box 4.3 **Statutory responses to overcome spillovers**

Some of the possible mechanisms that may help to overcome spillovers in the market include the following.

- Q*uotas* regulate the quantity of a good, service or emission (for example, pollution) that may be consumed or produced. Potential problems with quotas include identifying the appropriate consumption or production level, and that applying the same quota to all users or producers may not be efficient.
- *Subsidies and taxes* may be imposed either on consumption or production. The aim is to moderate behaviour indirectly by changing the price paid or received for a good, service or emission. The new price should reflect the costs or benefits of the purchase or production imposed on others. A subsidy that leads to a lower price may induce more consumption or production, while a tax that leads to an increase in price may induce lower consumption or production. Problems with this policy relate to identifying the appropriate tax/subsidy base, as well as the rate.
- *Minimum quality standards on inputs* are a means of specifying the technology (inputs) used in production. In the case of services provided by professionals, this may take the form of *licensing* that only allows people with certain qualifications to perform certain tasks. For these solutions to be effective, there needs to be a very direct link between the input and the externality generated.
- *Minimum quality standards on outputs* are a direct means of ensuring output meets minimum standards. These might be particularly useful where the quality, rather than the quantity, of the good or service is the source of externalities, and where objective, quantifiable standards can be set. (Section 4.3 provides a more detailed discussion of output standards in the context of information asymmetries.)

4.6 Spillovers in the market for building design and related services

The RAIA commented on the broad impact architecture has on society:

> Every person's lifestyle is dependent on architecture, at home or in the work place or in the street. Therefore every person has some risk exposure to architectural services. The effect of architectural works extends to those who have no role in the selection of the architect for the project. (sub. 16, p. 21)

In the market for building design and related services, many of these spillovers are intangible and subjective. Hence, placing a value on them is difficult. This does not lessen their importance, however. Indeed, as already noted, the Competition

Principles Agreement explicitly states that these must be taken into account in determining the benefits (and costs) of regulation. Participants have identified a range of specific possible externalities in this market, including the quality of the built environment and health and safety.

The built environment

Most, if not all, building design and related projects will have an impact on the broader physical and visual environment. The Architects Board of the Australian Capital Territory argued:

> … the built environment is relatively permanent and is therefore of great importance to community amenity and a massive component of the community's capital investment. Good design and construction is therefore imperative. (sub. 144, p. 1)

And the Architects Registration Board of Victoria noted the public nature of all architecture:

> … domestic and commercial architecture, while substantially a private good … makes a contribution to the built environment and general amenity of Australia's residential and business areas. (sub. 72, attachment 1, p. 10)

There is no question that the built environment involves externalities. And, as noted by Gary Pullar (sub. DR455), there are community concerns about the quality of the built environment. Visual (aesthetic) impacts are obvious. These effects may be both positive (a building that beautifies the streetscape, for example), or negative (a building may be an eyesore). The purchase of building design and related services also can have a number of non-visual effects on the amenity of the built environment. These include 'infrastructure requirements, inappropriate use of land, pressure on service provision, capacity for drainage [and] transfer of negative effects to adjacent properties' (Architects Registration Board of Victoria, sub. 72, attachment 1, p. 11).

In some situations, affected parties can attempt to resolve these issues themselves. For instance, where impacts are localised, community associations have provided a forum to discuss issues and take action regarding the quality of the built environment.

Although non-statutory responses may be limited, regulation may also be problematic. It is not possible to set objective standards for something as inherently subjective as good design. Recognising this, governments have adopted more inclusive and democratic approaches, such as planning processes, which facilitate the resolution of issues at the community level, rather than mandate aesthetic outcomes. Where objective standards can be set (for non-visual aspects of quality),

planning laws and codes include specific requirements. Whether attempting to increase the qualifications of one group of providers (by certifying architects) can further enhance community outcomes is considered in chapter 5.

Sustainability

The issue of sustainability takes a long-term view of the amenity of the built environment. The University of Melbourne noted:

> The built environment should be designed to respond, not just to the requirements of the client, but to the broader requirements of the public in terms of urban context, longevity, sustainability and flexibility. (sub. 65, pp. 6–7)

Sustainability in relation to building design and related services may include issues such as:

- the long-term pressures of development on the built environment, such as the infrastructure provision problems caused by 'urban sprawl'; and
- the impact of building design and construction on the use of nonrenewable resources, for instance, the energy efficiency of buildings.

Consumers are only likely to incorporate these factors in their decisions to the extent that they are directly affected. For example, they may be willing to pay more for a design that is energy efficient if it lowers their energy bills. However, except where they have a particularly strong altruistic environmental awareness, this will not extend to concerns for the effect of their energy use on others (via pollution, and the potential overexploitation of resources). Although the market can promote sustainable resource use, problems may occur where resource ownership is not well defined.

This may create a rationale for government intervention to promote sustainable development. This intervention would normally best be effected through direct approaches, that is, those that deal with problems at their source. Planning laws and building codes, for instance, address some infrastructure provision issues. Whether certification of architects has any additional role in promoting sustainability is discussed in chapter 5.

Cultural benefits of architecture

Some participants viewed architecture as one of the visual arts and, therefore, as an expression of a country's culture. For instance, the Architects Registration Board of Victoria commented: 'Architecture … is an expression of civic pride and prosperity' (sub. 72, attachment 1, p. 10).

Furthermore, architecture is a cultural expression of today's generation, but it also is left for future generations. J.H. Bryant, an architect, commented:

> The environment in which we live, work and play is clothed in our surrounding buildings. It is the heritage we have been left, and which our society leaves in due course. It is a measure of ourselves that the buildings we create reflect our achievements and skills. (sub. 140, p. 2)

For this inquiry, the relevant question in relation to this issue, is how well Architects Acts can promote Australia's cultural heritage. Culture is a reflection of society at large, and changes over time. As in the case of design aesthetics (discussed above), it is impossible to set objective benchmarks for what is inherently subjective. Indirectly, perhaps, governments can promote 'artistic achievement' via subsidy and commission. In commissioning large civic projects, government also may form committees to encourage public input, consequently helping to reflect community values in design. This is a less prescriptive approach than one where private consumers may be compelled to employ only those 'artists' deemed to have the qualifications necessary for promoting and reflecting the cultural values of society. Nonetheless, some participants have argued that certification of architects promotes the cultural benefits of architecture. This argument is discussed in chapter 5.

Health and safety

The health and safety externality arises because the consequences of poor (unsafe) design are experienced by people other than those who purchase building design and related services. This externality aspect of health and safety compounds the effect of the information problems discussed in section 4.3.

This problem can be mitigated by purchasers of existing structures. For instance, they can hire experts to investigate the structural integrity and other safety aspects of a dwelling they plan to purchase. Any warranties provided for the original work may be valid beyond the time the original purchaser owns or uses the building.

However, as discussed in section 4.3, these approaches may leave significant opportunities for undesirable outcomes. In addition, solutions such as general contract law that provide for financial compensation may not provide sufficient protection, given the irreversible nature of the potential losses involved. Thus, governments have implemented building codes to ensure health and safety standards for all users of buildings. Building Acts in various States also provide for compulsory indemnity insurance for building practitioners. The extent to which the regulation of architects could enhance the protection provided by these laws and codes is analysed in chapter 5.

International issues

Some participants have argued that externalities exist in the provision of architectural services and education to overseas buyers; in particular, money injected into the economy by overseas students studying architecture in Australia (see, for example, University of Melbourne, sub. 65). However, although these figures represent gains accruing to people not directly involved in providing the architectural service, they simply represent the outcomes of normal financial transactions, that is, payments for services rendered. They are not externalities.

The RAIA also noted the cultural benefits of such exchange:

> The abandonment of a statutory system of registration and regulation would almost certainly result in overseas students going to other countries in which a national regulation system is maintained. The loss to Australia would be economic, social, cultural and international goodwill. (sub. 16, p. 22)

The AACA also noted the 'social value of cross-cultural education':

> Australia has benefited greatly through the international interaction of staff and student exchanges together with Australian graduates who are employed throughout South East Asia as a result of this interaction. (sub. DR465, p. 13)

Although these cultural aspects can be considered externalities, the same benefits may derive from any university course. It is not clear that the benefits would be any greater for architecture than for any other university course or work exchange.

FINDING 4.2

Spillovers in the market for building design and related services may be significant. Non-regulatory responses may be limited because it may be difficult to conduct negotiations among affected parties. This suggests that government intervention in some form may be warranted, particularly in relation to the quality and sustainability of the built environment and other social objectives, including health and safety. However, it is vital that any intervention enhances community well-being. This generally requires that the intervention target the spillover as directly as possible.

5 Current Architects Acts: benefits

The extent to which current regulation of architects addresses consumer protection and spillover issues (identified in chapter 4) is assessed in this chapter.

5.1 Introduction

Benefits of the Architects Acts must be assessed relative to outcomes that would occur in their absence (chapter 1). In this context, likely market (non-statutory) responses to information asymmetries and spillovers in the market for building design and related services were discussed in chapter 4. As noted in chapter 2, Architects Acts also operate against a background of other legislation that applies (or could apply) to architects and their work, including laws and codes specific to the building industry, and general consumer protection legislation.

A number of laws and codes currently regulate output standards in the building industry.

- Building laws and codes, which set minimum technical standards relating to the health, safety and amenity of buildings and other structures. Building Acts in various States also register building practitioners and require them to carry indemnity insurance (chapter 2).
- Planning laws and codes, which provide processes and guidelines for dealing with broader community issues relating to buildings and other structures, such as heritage, cultural and aesthetic values.

In addition, architects (and other building design practitioners) are subject to general consumer protection legislation.

- Tort and contract law, under which a person who suffers loss or damage due to the defective provision of services can sue the service provider responsible.
- The *Trade Practices Act 1974*, which prohibits anti-competitive behaviour under Part IV, and contains consumer protection provisions in Part V that prohibit misleading, unfair or dishonest conduct. Section 52 prohibits misleading or deceptive conduct, and section 53 prohibits false or misleading representations with respect to the standard, price or benefits of services.

- State and Territory fair trading legislation, which largely mirrors the Trade Practices Act (but applies to unincorporated entities). This legislation also provides for restitution to consumers if service providers are found to have breached the relevant Acts (chapter 2).

In New South Wales and Western Australia, professional standards legislation also exists under which professional and other occupational associations are able to establish limited liability schemes for members with a number of safeguards to protect the interests of consumers, including compulsory professional indemnity insurance.

5.2 Protecting consumers

There are two broad ways that government may intervene to protect consumers faced with information problems: by specifying quality standards and by providing information. Current Architects Acts attempt to do both.

The setting of standards for goods or standards and qualifications for service providers is based on a view that either consumers cannot obtain information or, even if they had sufficient information, would choose not to protect themselves adequately. Information provision, on the other hand, assumes that consumers are able to make their own decisions, provided they have adequate information. Such information may not be provided, or provided efficiently, in an unregulated market.

Quality standards

Some participants argued that restricting the use of the title 'architect' to those who have completed a prescribed level of education and training is essential to ensure minimum (and average) standards and, hence, protect and reassure consumers. Michael Harris, an architect, noted:

> … the consumer in engaging a chartered [registered] architect is assured of a minimum standard of professional service prescribed by the Act, thereby minimising the risk of receiving bad service … (sub. 142, p. 1)

And the Architects Board of the Australian Capital Territory commented:

> By ensuring that architects have an appropriate level of education and experience, occurrence of failures is minimised, rather than having a system under which the failure is dealt with after the event. (sub. 144, p. 2)

Disciplinary provisions of the Architects Acts are seen as supporting the requirements for initial registration. By disciplining architects who do not uphold

certain standards of behaviour, adherence to standards is encouraged. James McKinnon, an architect and town planner, submitted:

> This is not to say that those properly qualified do not make mistakes, but at least there is hanging over them the threat of deregistration for non-performance.
>
> … deregistration is the ultimate sanction against incompetence or malpractice. (sub. 20, p. 1)

Some participants argued that legislation specific to architects is needed to compensate for inadequacies in general consumer protection legislation. The Architects Board of South Australia noted:

> … the Trade Practices Act and Fair Trading Act provide some protection to the consumer in relation to certain issues. However, the continued legislative protection of the title architect provides a further level of protection to ensure that in the first instance that those individuals or corporations who are registered have met minimum standards. (sub. 137, p. 11)

The Board of Architects of New South Wales also expressed concerns about relying on general consumer protection legislation, due to the *ex post* nature of its remedies:

> Whilst members of the public who suffer loss at the hands of non-professionals have recourse to the courts and other consumer protection instruments, this is invariably after the event, causes considerable trauma, and is costly in terms of time and money. (sub. 35, annexure B, p. 19)

Furthermore, some participants (including David Manfredi (sub. DR413), the RAIA (sub. DR441) and Tom Maxwell (sub. DR454)) argued that a major problem with regulations focusing on output standards, such as building codes, is that they only prescribe *minimum* standards. It was also argued that the benefit of employing qualified professionals is that they can provide standards over and above the prescribed minimum. Leichhardt Council submitted:

> In spite of increases in staff, and streamlining of the process, efficiency and suitable outcomes depend heavily on the quality of submissions, and the use of adequate skills in this regard. Many of the delays and negative outcomes are the result of inadequate skills being applied in the making of applications. (sub. DR487, p. 1)

Prescribed minimum standards in legislation such as building codes are not necessarily inadequate. Indeed, prescribing minima may be an entirely appropriate regulatory response which avoids setting unnecessarily high standards and allows consumers discretion in choosing quality levels above the minimum. There may be additional benefits to consumers (and the community) of using competent providers who, for instance, can efficiently incorporate legal requirements into design (as well as being able to fulfil any client-specific requirements), and produce high quality documentation, which may help to increase the efficiency of the building process. If this is the case, the question is whether this should be a matter of choice for

consumers or whether such standards need to be promoted or even enforced by government. Many participants argued that government should be involved, and that the Architects Acts provide a beneficial and necessary *ex ante* layer of protection.

Generally speaking, the benefits of the formal education and practical training required for registration of architects, in terms of enhancing their technical expertise and skills, will protect consumers to the extent that:

- there is a strong link between the areas covered by architects' education, training and practical experience, and the source of harm against which consumers need to be protected; and
- architects have direct responsibility for the aspect(s) of the service that is (are) the source of harm.

Codes of conduct might further increase the quality of architects and, hence, further protect consumers, provided the codes are effectively and appropriately administered and enforced. To be effective, such a system needs to be:

- known and understood by consumers; and
- independently and transparently administered and enforced (both in practice and as perceived by consumers) — which may not be the case where, for instance, architect-dominated Boards have a monopoly in certification.

Whether the current certification system effectively addresses the issue of quality standards is examined below, according to the three sources of risk identified in chapter 4: financial and commercial, health and safety, and design aesthetics and functionality.

Financial and commercial risks

Certification may reduce the risk of financial harm in two ways. First, if the requisite education of architects includes components related to costing, estimating time frames for projects, and documentation and contract administration, the risk of cost overruns through incompetence may be reduced. Second, the conduct requirements imposed by the Acts, including integrity and good conduct in financial affairs, and the disciplinary provisions for their contravention, may reduce the occurrence of financial harm caused by impropriety.

Some participants argued that architects, through their training, gain particular skills in documentation and contract administration, setting them apart from other providers of building design and related services. For instance, according to Jayne Hackett, an architect, the Architectural Practice Examination 'includes a significant

emphasis on contractual issues in particular contract administration duties, responsibilities and practice' (sub. DR410, p. 10).

Although the training of architects may increase their knowledge of documentation, contract administration and project management, certification does not necessarily guarantee that particular project budgets are met. Professor David Standen suggested that 'the training of architects does not embrace, let alone increase, knowledge of costing' (sub. DR397, p. 3). This may explain why some participants (consumers of the services of architects) argued that, even where architects are employed, there can be cost and time overruns on projects. Andrew Begg, an architect and a current member of the Architects Registration Board of Victoria, acknowledged that 'bad estimating' is a common concern, which might need to be redressed in the education of architects (trans., p. 728).

Further, consumers do not have to employ architects on building projects, so even if Architects Acts promote (desirable) higher standards amongst architects (and increase the average quality of all architects), this will protect only those consumers who hire architects.

Protection from financial loss through disciplinary and conduct provisions in Architects Acts

Whilst the Architects Acts do not provide consumer protection in the sense of providing restitution for consumers,[1] disciplinary and conduct provisions of the Acts could protect consumers from financial loss by encouraging architects to adhere to professional standards of competence and conduct.

Over the years, there has been a relatively low number of complaints made by consumers about architects to the Architects Boards. A number of participants suggested that this reflects the effective operation of the current system. For instance, the Board of Architects of New South Wales commented:

> … it's probably an indication that the Act is working fairly well, that architects do take their responsibilities fairly seriously, but those who do not and notice has then come to the board, then they are prosecuted and they're deregistered. But the mere fact that the Act is there and requires certain levels of performance is a deterrent … (trans., p. 405)

However, other participants highlighted a number of problems with the implementation of the provisions, which may weaken their ability to enhance the quality of the services provided by architects. This suggests a contrary interpretation of the low number of official complaints.

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1 General contract and tort law and, in most jurisdictions, the Fair Trading Acts are the sole avenues for consumers who seek financial redress for loss or damages suffered.

The precise detail of a quality enhancement system does not need to be known for it to provide consumer protection. However, consumers must know of the system's existence if they are to be able to use it effectively and if it is to promote appropriate professional behaviour. Yet Jeffrey Keddie, a former registrar of the Architects Registration Board of Victoria, noted:

> One difficulty about accessing complaint procedures is the lack of public awareness of the complaint authority's existence. (sub. 34, p. 23)

Thus, the relatively low number of complaints made to Architects Boards may, to some extent, reflect a lack of consumer awareness of the Boards and their role. Jeffrey Keddie also noted that the 'high' number of complaints made to the Board in Victoria compared to New South Wales may reflect the Victorian Board's attempts to increase its profile, including the 'insertion of a prominent notice in the Yellow Pages directory' (sub. 34, p. 23).

In recent times, other Boards, including those of New South Wales and Western Australia, have attempted to improve their profile (and consumer awareness of the system), through the establishment of a web site and advertising in the Yellow Pages, respectively.

Even where consumers are aware of the Boards and their role, a number of factors may discourage complaints and weaken the consumer protection role of the conduct provisions of the Acts.

- Grounds for complaints may be inadequate or unclear. For instance, in some jurisdictions, it is not made explicit whether negligence and incompetence are grounds for consumer complaints (chapter 2). According to the NSW Department of Public Works and Services, 'some of the complaints involve alleged negligence or reflect dissatisfaction of a client with an architect's performance and complaints on these grounds are not catered for in the current Act so disciplinary action cannot be taken' (NSWDPWS 1997, p. 24).
- The imprecise nature of the provisions for disciplinary actions may make it more difficult to convict an unscrupulous architect. The ACT Government noted that there 'is little evidence that the current subjective provisions for disciplinary action are as useful as more specifically framed grounds, such as conviction for a serious criminal offence or the unscrupulous practice of architecture' (sub. 381, p. 2).
- As noted above, consumers are unable to seek restitution under the Acts. In some cases, consumers seem to be using complaints mechanisms provided under general legislation, which do provide for restitution, rather than the Architects Acts. In New South Wales, for instance, the number of written complaints received against architects by the Department of Fair Trading in 1998-99 (28)

exceeded the number of complaints made to the Board (3) (NSW Department of Fair Trading, pers. comm., 14 April 2000; Board of Architects of New South Wales 1999)[2].

- Some complaints procedures seem unnecessarily complex. For instance, in Western Australia, persons wishing to have a complaint examined by the Board must file a statutory declaration, identifying (among other things) the clause(s) of section 22A(1) of the Architects Act under which the misconduct is alleged. In New South Wales, of three consumers who approached the Board to make complaints in 1998-99, two did not proceed after being 'apprised of the particular provisions of the Act' (Board of Architects of New South Wales 1999, p. 10).

Even where an action is brought successfully, the apparent unwillingness of the Boards to impose significant penalties on architects may not encourage adherence to standards of conduct. The Board of Architects of New South Wales submitted:

> In the worst case, there is provision for removal from the register. Removal from the register, being seen as a very serious penalty for it has the effect of denying future income earning potential, is only rarely applied. (sub. 35, annexure B, p. 37)

The shortcomings discussed above may have contributed to a perception that, in practice, the focus of these procedures is more about protecting the profession than protecting consumers. This perception may be exacerbated by the investigative and disciplinary functions being undertaken, in most cases, by the architect-dominated Boards, and the lack of an independent appeals mechanism for consumers in most jurisdictions (chapter 2).

Health and safety risks

Information deficiencies and the potential for harm appear most significant in the area of health and safety, particularly for consumers in the residential market, and particularly with respect to the structural aspects of construction (chapter 4).

The WA Chapter of the RAIA noted the role of architects in addressing health and safety concerns:

> … the registered architect is responsible for a whole range of complex variables, not only structure, and each of them at some time or other may be life-threatening: the sprinkler systems, the escapes, the ventilation … and so on. (trans., p. 9)

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2 The Commission understands that the definition of architects used by the Department of Fair Trading only includes architects, and not other providers of building design and related services.

However, a number of other providers, including builders and engineers, ultimately may be responsible for structural safety. The ACT Government commented:

> Some of the aspects that are most likely to affect these [health and safety standards], such as structural soundness, are typically the final responsibility of other professionals, such as structural engineers. (sub. 381, p. 4)

The allocation of this 'final responsibility' reflects the differing focus of the training, expertise and work focus of the respective professionals. Participants generally agreed that the basics of structural safety tend to be covered in architecture courses, but that this knowledge is increased only to varying degrees during a graduate's practical training years (depending on where that experience is gained), and is not covered at all in the practice examination (see, for instance, Greg Snedden (sub. DR432)).

Internal design safety, or the non-structural aspects of health and safety, is an integral part of the design process. This is true whether or not the designer is an architect. However, it is not clear that the current regulation of architects enhances the skills of architects in this area. Professor David Standen submitted that:

> … non-structural aspects of health and safety, such as heating, ventilation, cooling, security, drainage, weather proofing, access for disabled, etc. … are only marginally covered in university courses. (sub. DR397, p. 2)

Even if the initial education and experience required for registration provides architects with sufficient (and superior) knowledge about building structures, the role of the Architects Acts in protecting consumers from health and safety risks is indirect. First, there are no ongoing requirements to ensure that architects are practising and have knowledge and experience of best *current* practice. Second, consumers may choose not to use architects. Many consumers in the residential sector, who arguably are the most in need of protection, choose to use non-architect designers (chapter 3). Raising the minimum (and average) quality of architects, only protects consumers who hire architects. For these reasons, the Architects Acts can be described as a blunt instrument for protecting consumers against health and safety risks.

As noted above, the current legislative setting provides for a number of other regulations, such as building codes and standards, which target directly minimum health and safety standards of construction. This is not to say that these codes work perfectly. But they attempt to set and enforce building safety standards, which can be objectively measured, and can be applied to all those involved in building. This contrasts with a statutory certification system that regulates one input — architects — who may or may not be responsible for building safety.

Risks arising from design aesthetics and functionality

Design, in terms of aesthetics and functionality, tends to be the focus of university architecture courses and, arguably, is what architects do best. However, the scope for regulation to reduce risk of poor design appears minimal, given that the market seems to operate quite well to reduce the risk of harm from problems in design aesthetics and functionality (chapter 4). Given the inherently subjective nature of design, consumers normally search for a provider whose design style suits their tastes and needs. Moreover, precisely because design aesthetics cannot be assessed objectively, the ability of regulation, including Architects Acts, to promote good design is limited. Indeed, allowing a wide degree of variety and choice is important in order to allow consumers to find a provider who best meets their design needs.

However, there may be scope for government to play a role in information provision about providers to help consumers make better choices. This possibility is addressed below.

FINDING 5.1

The ability of the current Architects Acts (under review) to protect consumers by ensuring quality standards in the areas where the potential for harm is significant (financial and commercial, and health and safety risks), is limited because:

- *consumers choose to hire non-architects;*
- *certification focuses on one group of providers — architects — who may not have the prime responsibility for those areas which could cause harm;*
- *one-off registration may not ensure that all architects possess current knowledge and competence in these areas that may generate harm; and*
- *public awareness of the complaints and disciplinary provisions appears to be poor, and the general lack of procedural transparency and inadequate remedies for consumers may not promote consumer protection.*

Building codes target more directly potential harm from unsafe construction (regardless of provider). Fair trading laws provide alternative avenues for consumer complaints and redress, and prohibit misleading and deceptive conduct on the part of service providers.

Information problems in relation to the aesthetics and functionality of design are likely to be less severe — consumers usually will search for a provider whose design style suits their tastes and needs. Moreover, the ability of Architects Acts to protect consumers from poor design is limited because there is no objective test of what constitutes good design.

Information provision

Certification of architects and their services may provide information to consumers by offering a means of differentiating architects from other providers of building design and related services. Some participants identified this as important, given differences in the education, training and possibly skills of architects compared with non-architect designers. Theo Mathews, an architect, commented:

> This is not about protecting a 'club' as is sometimes cynically portrayed by those who appear to not understand the issues, it is about communicating a clear distinction to the public when seeking the services of an educated professional in the field. (sub. 25, p. 1)

The Architects Accreditation Council of Australia contended:

> Whilst architects and non-architects at times provide similar services they are not members of the same profession, separated only by an arbitrary title. Although they share some occupational skills, their overall training is directed to the achievement of different competencies and outcomes. (sub. DR465, p. 7)

Assuming there are significant differences in the skills and qualifications of architects and other providers, the question is whether government involvement in a 'labelling system' is in the community's interests. Government intervention might be justified if the government label is more credible or more efficient (in terms of decreasing consumer search costs) than a labelling system provided by a professional association.

Several participants pointed out that the public might attach greater credibility to a government-administered certification system than one controlled by a professional association. Professional bodies may be perceived as working in the interests of the profession, not the public. For instance, the Architects Board of South Australia commented:

> … self regulation by the profession does not address the issue of conflict of interest whereby the profession could be seen to be acting on behalf of its members not protecting the public interest. (sub. 137, appendix A, p. 8)

However, the Boards themselves, which comprise mainly architects, may also be perceived as working in the interests of the profession. Indeed, as discussed above, there are significant problems with the operation of the disciplinary and complaints provisions of the Architects Acts, which may decrease consumer confidence in them. The credibility of a label established by any one professional association may be stronger because of the potential for competition among associations to provide the most credible and accurate label, and because credibility must be 'earned' and maintained to retain members (box 5.1). Fair trading laws, which prohibit misleading and deceptive conduct or the making of false or misleading representations, are likely to prohibit persons incorrectly holding themselves out as

belonging to a certain association, or as possessing certain competencies which they do not hold.

Box 5.1 **Credibility of professional associations**

Competition can drive the professional association to provide credible labels and transparent disciplinary processes.

In the absence of government licensing, professional associations do not have a captive membership market: membership is voluntary and any particular association can face competition from other associations representing the profession. Thus, to maintain membership, the association must provide 'value-for-money' services to members. Members derive value from services that improve the member's skills and credibility, both in practice and in the eyes of consumers. They will only maintain membership if these benefits outweigh the costs of membership. Thus, there are incentives for the professional association to:

- provide informative label(s) to differentiate the profession and members of particular associations; and
- maintain the credibility of the label in the marketplace by enforcing appropriate standards of behaviour and conduct (this would be done through controls on admission to the association and disciplinary measures).

In contrast, under a government-backed labelling system, the lack of potential competition means that there are not the same incentives to ensure an independent, transparent and credible system.

In addition, it has been argued that statutory certification provides information to consumers which reduces their need to undertake costly search. In other words, certification may provide an efficient screening device for consumers.

The RAIA commented:

> An important public benefit of architects legislation is that a statutory register makes it unnecessary for public client agencies to maintain their own registers of competent 'architectural service providers'.
>
> In a deregulated market, these agencies would need to invest significant resources into researching, establishing and maintaining a register of competent providers of architectural services. (sub. 16, p. 23)

The Victorian Department of Infrastructure argued that 'reliance on the use of controlled titles … by a responsible authority is … of considerable value to purchasers' (sub. 33, p. 3) because it provides an initial screening device.

The Board of Architects of New South Wales also contended that certification is an important starting point in the consumer search process:

> They [consumers] know at least that a person is registered to start off with. They then make other inquiries as to the type of work the architect does, whether it's going to be compatible with their way of thinking, and so on. There's a whole lot of criteria the public uses … But the first point is, is the person registered … (trans., p. 390)

Hence, certification may convey some information to those consumers who know about the system and understand precisely what certification means.

However, those consumers who arguably are most in need of information, appear to be unaware of the certification system, and therefore receive no additional information. The Trade Practices Commission found:

> … it does appear that clients in the middle to lower segments of the industrial and residential market … are generally unaware of the distinction between architects and other providers of building design services. This … is not at all surprising in view of the fact that architects do not generally operate in these market segments, and the lack of promotion of the certified title and the standard of qualifications which it represents. (TPC 1992b, p. 52)

Those consumers who are aware of the system but do not fully understand the provisions of the Acts and functions of the Boards, may perceive incorrectly that statutory certification guarantees the standards of any architect whom they may choose to employ. As noted above, certification does not guarantee quality, since the link between initial input (registration requirements) and lifetime output is indirect. If consumers misconstrue the information supplied, they may decrease their own search effort.

But even though certification may provide a screening device, this does not necessarily justify the intervention. First, since the services provided by architects are not homogeneous, consumers normally would still need to undertake additional search to find the provider best suited to their particular needs. The information sought through consumer search may subsume the generic information provided by certification. In addition, professional associations may not only be able to provide generic information to consumers, they also may have the incentive to provide differentiated labels and additional information. Other professions, including some in the building industry, have association-based registration systems which provide credible and informative labelling of their members (chapter 11).

FINDING 5.2

The current Architects Acts (under review) may provide a screening device for some consumers who are aware of the system and the extent of the information it provides. Other consumers, who do not fully understand the provisions of the Acts and the function of the Boards, may mistakenly believe that the system provides a government guarantee of service quality, and consequently reduce their search. Although statutory certification can provide information, it is not clear that this necessarily is more efficient or more credible than certification provided by professional associations and other bodies, especially where the latter are subject to effective competition. Service providers and associations also are subject to general fair trading laws that prohibit misleading and deceptive conduct or the making of false or misleading representations.

5.3 Addressing spillovers

Some participants argued that certification helps to address the problem of spillovers by creating and identifying a group of people who, by virtue of their education and training, have a deeper understanding of issues relating to health and safety, cultural benefits, and the quality and sustainability of the built environment. Although this may not guarantee quality, it may raise the minimum (and average) quality level.

The Architects Registration Board of Victoria commented:

> The formal review procedures serve to ensure that qualifications are held at an approved level, and that knowledge and skill are tested in a variety of ways, so as to ensure positive externalities (spill-overs) in design and practice competence and to minimise negative externalities which might arise through ignorance of elements of knowledge and practice. (sub. 72, attachment 1, p. 12)

The Architects Board of South Australia noted:

> Architectural education places considerable emphasis on social responsibility and community values, which obviously impact upon the general public. (sub. 137, appendix A, p. 8)

Where architects are employed, to the extent that their expertise includes an understanding of effects on the broader community, their work may reflect this. However, although architects may have expertise to consider spillovers in design, there are questions as to the willingness of consumers to pay for this. The basis of the externality problem is that consumers only tend to pay for services to the extent that they derive personal value. In this case, if architects charge higher fees

reflecting the extra quality they provide (including the consideration of externalities), or design more expensive buildings than the client requires (in order to address externalities), consumers may choose to hire non-architects, whose price better reflects the consumer's price–quality trade-off.

Even if architects were used on all construction projects, it is not clear that community welfare would be increased. First, a potential conflict of interest could arise for the architect if the interests of the client differed from those of the broader community. Where the interests of the client are at odds with the broader community, the client may choose to ignore the advice of the architect.

Second, the whole question of what constitutes 'good' design is extremely subjective. Garry Stevens, an architectural sociologist, commented:

> It is often impossible to determine just what architectural incompetence amounts to. Most people can tell when a *builder* is inept, but the matter of architectural ineptitude is a moot point. Within the field, architects often argue as to the quality of a building, whether it is successful or a disaster in aesthetic terms. Moreover, their assessment … is often at variance with the assessments of others …
>
> The Architects Acts do not protect us from bad architecture. If even the occupation itself cannot work out what good architecture is, how can we possibly be protected from bad architecture? (sub. 380, pp. 4–5)

Further, not all participants agreed that architects were in fact best qualified to consider the whole built environment. I.J.S. Bowie, a consultant planner, argued:

> While the latter [architectural profession] is concerned with individual structures the former [planning profession] is concerned with the massing of the elements which make up urban and non-urban environments. (sub. 133, p. 2)

And Dr Alexander Cuthbert, Professor of Urban Planning and Development at the University of NSW, noted:

> Urban design is a specialist discipline, and can never be a mere reflection of an architectural training. The fact that most architects can draw buildings lends a false confidence to the idea that they are automatically good urban designers, which compounds the problem of so much bad architecture with even more bad urban design. (Cuthbert 2000, p. 17)

Professor David Standen also commented that the 'quality of the overall built environment is now more dependent on practising planners and planning legislation than on practising architects' (sub. DR397, p. 5).

As already noted, planning processes may address issues related to the quality of the built environment in a way that attempts to reflect wide-ranging community views. Government also may promote culture by commissioning large civic projects (chapter 4). In the process, government may form committees to encourage public

input, and, in this way, help to reflect community views in design. As noted in chapter 4, this is a less prescriptive approach than compelling private consumers to employ those deemed to have the qualifications necessary for promoting and reflecting the cultural values of society, especially given the subjective nature of good design and culture.

Architects Acts are unlikely to be effective instruments to promote sustainable resource use. As noted in chapter 4, sustainability of resource use is better dealt with by policies that address problems at their source. Therefore, intervention — if deemed warranted — usually is best directed at encouraging sustainable resource use in *all* applications of a scarce resource, not just sustainable use in buildings. This is best achieved by ensuring that prices of resources reflect their true social value (via taxes or subsidies, for example), which then allows consumers to make decisions based on these social values. Although architects may have the expertise to assist and advise consumers about resource efficiency in buildings, they are unlikely to be in a position to make appropriate decisions regarding resource use for the community as a whole.

With regards to community health and safety, where objective standards can be applied, defining and enforcing safety standards, where feasible, is likely to be a more direct and effective way to address these spillovers (chapter 4). Furthermore, as noted in the discussion above, the extent to which architects are responsible for, and certification improves their ability to deal with, health and safety issues appears limited.

Thus, building and planning codes may better address issues of minimum health and safety, as well as whether plans fulfil broader community needs in terms of public amenity and aesthetics. The Building Designers Association of Australia stated:

> 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. (sub. 40, p. 10)

Although building and planning codes only prescribe minimum standards, this may be appropriate targeted regulation (see discussion above) and, because building and planning codes apply to all providers of building design and related services, they are a more direct and comprehensive way of addressing externalities. As noted by the Trade Practices Commission:

> … building codes and other legislation which regulates town planning, building, environmental impact and health and safety standards, applies to all persons in the design and building industry, including architects. This legislation is intended to ensure that all building design services, whether provided by an architect or not, meet an acceptable standard. In view of these building regulations it is difficult to accept that

> statutory certification of architects is necessary to ensure that the standards of health, safety and amenity of buildings are maintained. (TPC 1992b, p. 52)

FINDING 5.3

The current Architects Acts (under review) are a blunt instrument for addressing spillovers because:

- *the provisions apply to one group of providers, who may not be responsible for those aspects of the service which could generate spillovers;*
- *regulating architects does not target spillover problems, such as the quality of the built environment and community health and safety, at their source; and*
- *there is no feasible objective measure of what constitutes an acceptable outcome for spillovers relating to building design.*

In most cases, alternative regulations are in place to address various spillovers, including planning processes that address community concerns relating to the quality of the built environment. These approaches target concerns more directly and comprehensively than certification of architects.

6 Current Architects Acts: facilitating exports

The export of architectural services (Australian architects competing for work in other countries) and the export of architectural education services (the education in Australia of students from other countries) are of growing importance to the architectural profession in Australia. This chapter evaluates arguments about the role of the current Architects Acts (under review), in relation to statutory course accreditation and statutory certification, in the promotion of these exports. Ways of reducing barriers to trade, which can result from restrictions imposed by regulation (among other things), are also discussed.

6.1 Education of overseas students

In recent years, fee-paying overseas students have become an important, and growing, source of revenue for Australian universities. In 1998 there were 64 420 overseas fee-paying students studying in Australia. Almost half of those students were studying economics, accounting, commerce or administration. Approximately 1000 were studying architecture (DETYA 1999).

The proportion of overseas students graduating from Australian architecture courses in 1998 ranged from less than 10 per cent to approximately one-third of the total number of graduating students (RAIA 1999c).[1] Overseas students traditionally have come from Asian countries, such as Malaysia and Singapore and, according to the University of Adelaide (sub. 41), are now also attracted from Africa, Europe, and North and South America.

Further revenue is obtained from the establishment (usually on a partnership basis) of Australian architecture courses (not necessarily the entire five-year course) in other countries, particularly Asia. For example, Deakin University offers architecture courses in Singapore and Hong Kong.

Architecture courses in Australia are subject to statutory accreditation. The Boards have responsibility for accreditation of courses under the current Architects Acts.

1 At some universities data relate to the number of course students rather than graduations.

Accreditation is undertaken jointly with the RAIA. The Architects Accreditation Council of Australia (AACA) coordinates accreditation nationally and the International Union of Architects (UIA) establishes international standards.

Several participants argued that repeal of the current Architects Acts, and with it removal of the *statutory* course accreditation system, would be detrimental to architecture in Australia and the wider community because of the impact on exports of education. Queensland University of Technology summarised the argument:

> If one of the key participants in assuring internationally acceptable standards for architectural education (being the registration authorities) is removed through de-regulation, then Australia runs the serious risk of having its architectural education down-graded, both in fact and in the perception of other countries. This would be to the long-term detriment of Australian architects exporting their services, and to the short and long-term detriment of Australian architectural education. (sub. DR459, p. 1)

Participants commented that Asian countries, in particular, would view the removal of statutory accreditation unfavourably. For example, the University of Melbourne, also on behalf of Deakin University and RMIT University, commented:

> Under the Architects Acts, the accreditation of architecture courses in Australia is widely accepted in Asian countries. To remove the current accreditation process is putting the viability of our courses at risk … The Architecture Boards in Asian countries may see the repeal of the Architects Acts as a weakening of the accreditation processes and an indication of a lack of Australian Government support for the courses and profession of architecture. (sub. DR453, p. 1)

The impact of the repeal of statutory accreditation was considered by several participants to be perennially substantial for the following reasons.

- Overseas students each pay at least $10 000 per annum in tuition fees — $16 000 at the University of Melbourne. These fees can account for a significant proportion of the funding for both larger and smaller architecture schools. Without the credibility of statutory accreditation, overseas students would go 'to other countries in which a national regulation system is maintained' (RAIA, sub. 16, p. 22). The reduction in student numbers would adversely affect the viability of the schools and the quality of education for domestic students. Domestic students could even be forced to consider undertaking architecture courses in other countries. Curtin University of Technology (cited by the AACA) also estimated that at least ten of its staff members would be shed under this scenario (RAIA, sub. 16; Queensland University of Technology, sub. DR459; AACA, sub. DR465; Tom Maxwell, sub. DR454 and trans., p. 201).

- There would be a negative flow-on effect to the wider economy as overseas students would no longer be spending money on rent and other living expenses (RAIA, sub. 16).
- International goodwill and the social value of cross-cultural education and international interaction would be adversely affected (RAIA, sub. 16; AACA, sub. DR465).
- The opportunity to export educational services via the establishment of architecture schools in other countries would decline (AACA, sub. DR465; Architects Registration Board of Victoria, sub. 72).

Professor Laurie Hegvold, Curtin University of Technology (trans., p. 41), stressed the importance of statutory course accreditation to overseas students, particularly those from Asian countries. He forwarded a petition, signed by 39 overseas students enrolled in the Bachelor of Architecture course, which stated that:

> … if there were no government regulation of architecture courses in Australia, this would cause confusion in our home countries and as a result we would probably choose to study architecture in a country which does have government regulation. (sub. DR491, p. 1)

Professor Hegvold also commented that the culture of architecture differs from that of other disciplines so that, although non-statutory accreditation may be acceptable in other disciplines, it is not acceptable in architecture:

> There is a very strong argument there that … these cultures are becoming more embedded and stronger … Basically they [the UIA] are a group of countries, maybe a hundred or so, and to the best of my knowledge they are all government certified. (trans., p. 43)

Although it is possible that the removal of statutory accreditation of architecture courses could result in some reduction in the number of overseas students, this is not an argument which, of itself, justifies the retention of the current Architects Acts, particularly if these impose costs on the domestic economy.

Moreover, the reduction in the number of overseas students may be substantially less than suggested. First, overseas students are likely to choose to attend architecture courses at Australian universities for a variety of reasons (in addition to the manner in which courses are accredited), including the reputation of the university, the quality of the course, the experience and skills of the staff, distance from the home country and the 'value-for-money' of the course.

Importantly, the removal of statutory accreditation of architecture courses is unlikely to mean an absence of course accreditation. Course accreditation, similar to that undertaken for engineering and accountancy, could be undertaken by a non-

statutory organisation, for example, the RAIA, which plays an important part in the current accreditation process.

Many overseas students, including students from Asia, are attracted to other courses which do not have statutory accreditation in Australia. For example, in 1998, there were approximately 6300 and 4500 overseas fee-paying students enrolled in accounting and engineering courses, respectively (DETYA 1999). Both courses are accredited by the relevant professional association — not by government — and accreditation is not legislated. Accreditation by these associations is widely-held as acknowledgment of quality in the market.

In particular, many engineering students from overseas apparently have chosen to come to Australia to study rather than travel to other countries which have statutory course accreditation, such as Thailand and Malaysia.[2] There is also a degree of government recognition of engineering courses in the United States and United Kingdom. In other words, overseas engineering students have the choice of studying in countries with statutory accreditation yet many choose Australian courses. Statutory accreditation, therefore, does not appear to be an overriding factor in course selection for these overseas students coming to Australia.

According to the Institution of Engineers, Australia (IEAust), overseas students choose to study engineering in Australia because Australian engineering degrees are regarded highly world-wide. Students apparently wish to be assured that course accreditation standards are sufficiently high to meet international standards but they are probably not concerned about whether accreditation is statutory (IEAust, pers. comm., 28 June 2000).

Moreover, the quality of the non-statutory accreditation of Australian engineering courses is attested to by the participation of Australia as one of eight initial countries in the 'APEC Engineer'[3] and the establishment of several bilateral mutual recognition agreements with other countries.

This suggests that, if accreditation of architecture courses were rigorous but non-statutory, overseas architecture students would be likely to continue to study in Australia.

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2 Of note is a move in each country to joint accreditation with the relevant professional association.

3 Countries have agreed to a framework of best practice which includes the concept of substantial equivalence underpinning a register of persons who are recognised as professional engineers within an APEC country, and have met certain criteria and procedures approved by the APEC Engineer Coordinating Committee. The register will form the basis for future mutual recognition agreements between countries to incorporate exemption within existing regulation.

Second, any concerns that overseas students may have regarding the quality of Australian universities, and courses in general, could be addressed by the Australian University Quality Agency, which is to be established in 2001. Commonwealth, State and Territory Governments, and universities, have agreed to new quality assurance and accreditation processes for universities, partly in recognition of the export potential of education in a competitive world market.

The main role of the agency will be to verify (by audits and public reports) the quality assurance claims made by universities. The proposed membership of the agency board is one-third elected by the universities, one-third nominated by the Commonwealth and one-third nominated by the States and Territories, with nominees covering the interests of government, business and the community (Kemp 1999).

This broader accreditation of universities, combined with non-statutory course-specific accreditation, could result in accreditation of architecture courses which is as good as, or even superior to, the current system.

While there appears to be no reason why non-statutory course accreditation could not be considered by both overseas and domestic architecture students to be a credible alternative, a change in their perception regarding the importance of statutory course accreditation may be required. Such a change is likely to take time and will not occur without the provision of appropriate information to students and the commitment of the architectural profession in Australia and international architecture bodies, such as the UIA.

FINDING 6.1

A number of considerations, including statutory accreditation of architecture courses, encourages overseas students to study architecture in Australia. However, non-statutory accreditation, as occurs in other professions, could be established as a credible alternative.

6.2 Exports of architectural services

According to the Australian Bureau of Statistics, exports of architectural services have declined over recent years, to total $13 million in 1998-99 (chapter 3). This may reflect the downturn in Asian economies. However, participants noted that exports of architectural services, particularly to Asia, were a significant, and expanding, part of the business of some Australian practices. In order to increase exports, it was argued, Australia must maintain a statutory certification system consistent with those operating in other countries.

International consistency of regulation

The RAIA noted that, in broad terms, the current regulation of architects is consistent across many of the countries (for example, the United States, Malaysia and the United Kingdom) in which Australian architects compete. However, there are numerous differences in the detail; for example, whether companies are regulated, whether there is a requirement for continuing professional development, how architects from other countries are assessed, and whether there are different levels of registration (Murison 1999).

Several countries, particularly in Asia, not only ascertain whether architects are registered in their country of origin, but will not permit them to work as architects without gaining registration in that country, and securing the services of a local representative (a locally registered architect). In case studies undertaken by the RAIA in 1998, architectural practices noted the difficulties of operating in other countries and identified several barriers to exporting. In summary:

> Australian architects have found it frustrating that they cannot call themselves 'architects' in many Asian locations and thus to have designs signed off, they must have associations with local firms who may do no work. To register as an architect in these countries is prohibitively difficult. (RAIA 1999a, p. 20)

Denton Corker Marshall, a large exporter of architectural consulting services, noted:

> Registration, or lack thereof, is commonly used by other countries as a means of excluding overseas architects and preventing them from penetrating home markets: the most restrictive devices possible are sought to keep architects out. This generally translates into looking for the highest standard of registration. (RAIA, sub. DR441, attachment 5, p. 1)

Registration requirements, including the recognition of overseas qualifications and experience, can become a barrier to trade, and may be only one of several barriers that limit competition from overseas architects in other countries (box 6.1).

Many participants argued that, if regulation in Australia were weakened compared to other countries and, in particular, if there were no statutory certification,[4] Australian architects would be severely restricted in their ability to export their services. The RAIA noted:

> It is **certain** that the competitiveness of Australian architects on the world market would be impeded by repeal of existing Architects Acts if this legislation is not replaced by a new statutory system of registration and regulation. (sub. DR441, p. 12, emphasis in original)

4 Certification is described in box 4.2. In respect of the regulation of architects in Australia and most other countries, registration, in effect, is certification.

Box 6.1 **Barriers to international trade**

The Department of Foreign Affairs and Trade noted several barriers to trade in architectural services (in addition to recognition of qualifications and experience), including restrictions on the right of establishment, residency/nationality requirements, employee quotas and visa controls. The Industry Commission recognised other potential regulatory barriers to trade in professional services: discriminatory taxation; local ownership requirements; local subsidies; restrictions on using international firm names, the scope of activities and forming partnerships; and exchange controls.[5]

In a survey undertaken by the RAIA, Australian architects listed several additional impediments to the export of services that are not directly related to regulation in other countries, such as a lack of overseas contacts and a lack of awareness of opportunities.

Sources: DFAT (sub. 146); IC (1995); RAIA (1998).

The AACA commented:

> The majority of Asian countries look to the statutory certification of 'architect'. In the competitive international arena, why would overseas countries give any cognizance to an Australian designer who does not have statutory certification. Repeal of the Architects Acts will discriminate against the Australian 'architect', resulting in losses of overseas commissions. (sub. DR465, p. 12)

Participants argued that, without statutory certification, countries competing with Australia would be quick to take advantage of the situation. For example, according to Professor John Cooper, a consultant architect:

> Competing countries such as the UK, USA, Canada and those of the EC, which all retain registration, would be given an immediate advantage, particularly in countries such as Malaysia, Singapore, Brunei and Hong Kong which themselves have registration requirements. (sub. DR394, p. 2)

More specifically, Denton Corker Marshall (RAIA, sub. DR441, attachment 5) commented that, in submitting for work in some countries, such as Japan, Hong Kong and Singapore, it had been asked to provide evidence of registration in Australia.

However, statutory registration is not likely to be critical for practices which have a reputation for excellence and have established local contacts. Professor Laurie Hegvold, in discussing the export of architectural services, noted that 'some architects work on reputation' (trans., p. 46).

5 For a detailed discussion on barriers to international trade in services, see IAC (1989) and OECD (1997).

Richard McEwen, representing the Association of Consulting Architects (NSW Branch) (trans., pp. 438–40), also commented on the importance of reputation with respect to his own firm. When undertaking work in China and Singapore, the firm's reputation was known and the firm was not asked to verify registration. However, this generally applied when an overseas firm undertook the design work and a local firm carried out project documentation and construction. He went on to explain that, if an overseas company sought to establish itself in Asian countries, such as China, so it could manage the whole project, proof of registration would be required.

Although some smaller architectural practices and sole practitioners have an established overseas reputation and local contacts, it is more likely to be the larger architectural practices that are able to rely on reputation and contacts, rather than statutory registration, to obtain work overseas.

Several participants also argued that, without statutory registration, reciprocity agreements with other countries may be jeopardised because most other countries have statutory registration — Australia would be the 'odd one out' and would therefore not be accepted. This would adversely affect the export of Australian architectural services. For example, the AACA noted that negotiations are currently well advanced towards the establishment of a mutual recognition agreement for reciprocal registration of architects with the United Kingdom Architects Registration Board. This agreement, according to the AACA, would facilitate access to markets beyond the United Kingdom, including the European Union, United States, Canada and ASEAN countries with historic ties to the British system. The AACA argued that repeal of the current Architects Acts, with removal of statutory registration would:

> … abort the proposed mutual recognition agreement for reciprocal registration. This would be a serious blow for Australia's hopes of expanding overseas markets for export of architectural services. (sub. DR465, p. 9)

Moreover, the Architects Education and Registration Board (AERB) of New Zealand (trans., p. 536) commented that it is likely that, if there were no statutory registration of architects in Australia, reciprocal work arrangements between Australia and New Zealand, under the *Trans Tasman Mutual Recognition Arrangement 1996* (TTMRA), would no longer apply. According to the Department of Foreign Affairs and Trade (DFAT) (Australia) and Ministry of Foreign Affairs and Trade (MFAT) (New Zealand), under the existing TTMRA New Zealand is not required to register Australian architects if they are not registered under Australian legislation. Moreover, New Zealand could refuse to accept Australian architects on the grounds that the occupation (or profession) is no longer equivalent across jurisdictions (DFAT, pers. comm., 20 July 2000; MFAT, pers. comm., 20 June 2000).

Under this scenario, Australian architects already working in New Zealand under mutual recognition would not be affected. However, Australian architects who seek to work in the future in New Zealand would be required to undertake the full registration process in New Zealand in order to use the title architect, but would be able to compete for work as non-architects (because, as in Australia, regulation in New Zealand does not restrict practice).

The impact on reciprocal work arrangements of architects being regulated under other legislation (if Architects Acts were repealed), such as State Building Acts, is less clear. It *may* be the case that the TTMRA continues to apply. DFAT noted:

> It is arguable that the definition of registration in the TTMRA could include a situation where architects were required by another Act in each jurisdiction, such as building legislation, to be licensed, approved, admitted, certified or authorised in some other way to qualify as an 'architect'. It would then be a question of whether the standards for accreditation of architects in the 'indirect' legislation of each Australian jurisdiction was considered 'Equivalent' under the terms of the TTMRA by the New Zealand Board. (DFAT, pers. comm., 20 July 2000)

The AERB considered that, if only some Australian States and Territories repealed their Architects Acts, the registration process would become somewhat more complicated than currently is the case (trans., p. 536), but it also noted that repeal of the Acts would not force New Zealand to register any Australian 'hopeful designer' and therefore New Zealand's mutual recognition negotiations with other countries would not be jeopardised (trans., p. 533).

The extent to which the export of Australian architectural services to other countries would be jeopardised by the removal of statutory certification mainly depends on what replaces it. It is feasible that a credible non-statutory certification system could enhance the export prospects of Australian architects. The engineering profession in Australia has established such a system — the National Professional Engineers Register (box 6.2).

The export of services is of significance to many engineering firms — of the 320 engineering firms that are members of the Association of Consulting Engineers Australia (ACEA),[6] approximately 20 per cent (mainly medium to larger-sized firms) are involved in the export of services. These firms derive about 25 per cent of their turnover from work undertaken in other countries (ACEA, pers. comm., 1 August 2000).

6 The ACEA is Australia's peak body of private sector consulting firms providing engineering and related technological and management services.

Box 6.2 **The National Professional Engineers Register**

The National Professional Engineers Register is a national, voluntary database of professional engineers. Registration requires competency assessment, substantial current employment, continuing professional development and practice in accordance with the code of ethics. Disciplinary procedures may be instigated for breaches of the code. Members of the Institution of Engineers, Australia (IEAust), and non-members, may apply for registration.

The register is administered by the IEAust. The National Engineering Registration Board, with representation from State and Territory Governments, the IEAust and several other national organisations, is responsible for the operation of the register (IEAust no date (b)).

Approximately 10 000 engineers are registered, accounting for about 10 per cent[7] of practising engineers (IEAust, pers. comm., 18 May 2000).

The National Professional Engineers Register is cited by engineers and engineering firms when competing for work in countries where there is an expectation of registration. However, many engineers who work overseas do not consider it necessary to gain registration because they have an established reputation (IEAust, pers. comm., 19 January 2000).

Australian engineers, supported by this non-statutory certification system, compete successfully for work against engineers from countries with statutory certification (for example, the United States and New Zealand) in several Asian countries that also have statutory regulation (and registration) of engineers, such as Malaysia, Thailand, China, Singapore and the Philippines.[8]

The engineers register, which is operated by a board comprising representatives of the profession, consumer bodies and government departments, provides a model of a credible non-statutory certification system for both the domestic and export markets. It has formed the basis of several mutual recognition agreements with other countries which the IEAust has negotiated in recent years, including a successful mutual recognition agreement with the IEAust's counterpart in New Zealand. Architects could adopt a similar arrangement if there were no mutual recognition under the TTMRA. In particular, without a credible certification system (and credible course accreditation — section 6.1), it is unlikely that other countries would have considered that Australia had the credentials to take a lead role in the establishment of the APEC Engineer.

7 Based on Australian Bureau of Statistics 1996 Census of Population and Housing data.

8 As mentioned in section 6.1, some of these countries are moving towards a more co-regulatory approach to regulation.

However, as noted in respect of accreditation of architectural courses (section 6.1), a change from statutory to non-statutory certification is likely to take time and require the cooperation of domestic and overseas parties, including the UIA and overseas governments. The Commission considers that non-statutory certification could meet the requirements of foreign governments (and their consumers). However, if foreign governments impose requirements in order to protect architects (and to act as a barrier to trade), the appropriate action by Australia would be to attempt to reduce such barriers via international trade negotiations (see below).

Even if it were considered that statutory certification was a requirement to promote exports, such certification may not necessitate the retention of the current Architects Acts. Statute-based alternatives to the current system (for example, registration of architects under legislation relating to State Building Acts or a two-tier registration system), are discussed in chapter 10. Importantly, statutory certification does not necessitate continuation of provisions restricting use of the generic title architect and its derivatives.

In any event, the cost of any system of certification on the domestic economy must be weighed against the benefits derived from promoting exports, as well as other benefits.

FINDING 6.2

A certification system may be a necessary (but certainly not sufficient) requirement to enable some exporters of architectural services, particularly sole practitioners and small practices without an established reputation and contacts in other countries, to compete overseas successfully.

Non-statutory certification, as occurs in other professions, could be established as a credible alternative to statutory certification.

6.3 Reducing barriers to trade in services

Domestic statutory certification and accreditation of courses in order to meet overseas requirements, and thus promote exports, effectively take foreign regulation and requirements as given. However, as noted above, if those requirements are acting as a barrier to trade, the most direct and effective approach to promoting Australian exports of architectural services would be to reduce those barriers, rather than simply to impose similar standards in Australia.

Several barriers to trade in architectural services in other countries were identified by participants in section 6.2. These barriers not only affect potential Australian

exporters, but also have a negative impact on the economy of the country imposing the barriers.

The Industry Commission noted:

> Restricting trade in services for protectionist motives is likely to reduce economic efficiency, and hence national welfare … By opening up domestic markets to imported services, countries improve their productivity and benefit from greater international trade and specialisation. (IC 1995, p. 197)

In recent years, there has been an increasing emphasis on liberalising international trade in professional services (including architecture), particularly through the General Agreement on Trade in Services (GATS) under the auspices of the World Trade Organization (WTO). The WTO has established a working party to develop disciplines to ensure that measures relating to qualification procedures, technical standards and licensing do not constitute barriers to trade (with accountancy the first profession to be addressed).

In addition, other organisations and regional bodies are addressing trade barriers through initiatives to minimise regulation and foster mutual recognition. In some cases, the focus is regional or bilateral, rather than multilateral (box 6.3).

Mutual recognition agreements, such as the TTMRA and agreements implemented by engineers, have transformed the approaches of the past. These recent agreements incorporate reciprocity, rather than unilateral processes, thereby reducing uncertainty and transaction costs. However, as Button and Fleming (1992) noted, mutual recognition is not perfect. For example, it does not deal with a host of practical problems confronting those seeking to practise in other countries arising from different regulatory regimes, cultural traditions and language.

In order to facilitate negotiation of mutual recognition agreements in respect of architects, the UIA has developed non-binding, recommended guidelines. Although UIA Accord policy for the guidelines notes that the guidelines are intended to allow flexibility in developing agreements, the policy (reflected in the guidelines) appears inflexible in the key area of regulation, stating:

> Policy: That the UIA promote the registration/licensing/certification of architects in all countries. Provision for such registration/licensing/certification should be by statute. (UIA 1998b, p. 7)

The policy is elaborated in the guidelines:

> No person should be permitted to engage in the practice of architecture unless registered or otherwise permitted to practise under the registration statute. No person should be permitted to use the title ‘architect’ or otherwise represent to the public that

he or she is an architect unless he or she is registered to practise architecture. (UIA 1998a, p. 3)

Box 6.3 Examples of initiatives to liberalise trade in professional services

Multilateral focus

The GATS came into force in 1995. It provides 'a multilateral framework of rules for trade in services and a timetable for the progressive liberalisation of international trade in services' (DFAT, sub. 146, p. 2). However, DFAT noted that many gaps in members' commitments in architectural services remain. Australia has made legally binding commitments for architectural services under GATS.

In 1998, the WTO's Council for Trade in Services adopted disciplines on domestic regulation for accountancy. A framework mutual recognition agreement for accountancy had previously been developed. This is the first profession to be addressed in the development of GATS disciplines on the domestic regulation of professional services. Among other things, the accountancy disciplines specify transparency requirements (public availability of information), and require that measures should not be more restrictive than necessary to fulfil the objective. Australia is an active member of the working party that will continue to develop disciplines for other professions, and will be pursuing the development of disciplines for architecture.

The Organisation for Economic Cooperation and Development has conducted three workshops on liberalising international trade in professional services. General principles to emerge included that domestic regulation should not unnecessarily impede domestic and international competition, discrimination against foreign professionals should be avoided and market access should be based on transparent, predictable and fair processes.

Bilateral and regional focus

In 1990, the AACA and the Architects Educational and Registration Board of New Zealand signed a mutual recognition agreement for architects. The *Trans Tasman Mutual Recognition Arrangement 1996,* covering professions (and goods), was subsequently introduced.

The AACA is negotiating a mutual recognition agreement with the United Kingdom Architects Registration Board.

A regional forum of Western Pacific countries, including Australia, was held in Darwin in 1999 to discuss registration of architects and reciprocity in the region. The objective was to identify areas of commonality between registration systems that could form the basis of cooperative reciprocity (mutual recognition) agreements.

Sources: Williams (1999); OECD (1997); WTO (1998); DFAT (sub. 146); AACA (sub. DR465).

UIA policy of promoting the same regulatory standards world-wide may reflect and reinforce the status quo in member countries. While this may appeal to architects, it does not follow that this is necessary to facilitate international trade in services. Moreover, the same standards between countries should not be imposed unless there are net gains for the countries involved. Standards for goods differ between countries, reflecting local requirements, as do standards for many professional services. For example, engineers are subject to different forms of regulation throughout the world, yet they have established several unilateral and multilateral trade agreements (section 6.2).

Mutual recognition agreements between countries may be more difficult to negotiate when regulatory standards are different, but, as trade in the goods market and trade in engineering services attest, successful negotiation is feasible.

Gains to countries undertaking international trade in professional services, including architectural services, are likely to accrue when the focus is on reducing barriers to trade, through agreements such as GATS, rather than merely promoting the same regulatory standards across countries.

Addressing the problem at its source, that is, reducing barriers where they exist in other countries, is a more direct and effective approach to promoting exports than changing standards in Australia in an endeavour to meet the 'hurdles' imposed by these barriers.

Indeed, the Australian Government has also focused on addressing barriers to trade in architectural services through participation in the WTO so that Australian architects will be able to gain greater access to overseas markets.

DFAT noted:

> The promotion of trade in professional services, which includes architectural services is a high priority for the Australian Government … Restrictive, complex and non-transparent regulatory regimes are considered to be particular problems in many regional countries … Australia will be working to ensure that regulation is transparent and the least trade-restrictive necessary to achieve a policy objective. (sub. 146, pp. 1, 2, 3)

Australia also has an obligation to ensure that its system does not impose barriers to trade. Regulation should be as open, transparent and low cost as possible to foreign service providers.

FINDING 6.3

If other countries are intent on maintaining barriers to trade in architectural services, Australia's certification system, be it statutory or non-statutory, is unlikely to be effective in promoting exports. Reducing those barriers to trade, in fora such as the World Trade Organization, would be a more direct and effective way of promoting exports.

Ongoing action will be needed by Australia and other countries seeking to trade in professional (including architectural) services to continue developing and implementing initiatives to liberalise trade.

7 Current Architects Acts: costs

This chapter examines and assesses the costs of the restrictions contained in the various Architects Acts under review in this inquiry. A major focus is the impact of the restrictions on occupational labelling contained in the Acts, on competition in the market for building design and related services. Other restrictions — such as those related to ownership of architectural practices — may impede efficient provision of architectural services. The potential benefits of these arrangements are examined in chapters 5 and 6, while chapter 9 provides an assessment of the net benefits — that is, benefits minus costs.

7.1 Introduction

A central focus of National Competition Policy reviews is the impact that the legislation under review has on competition in the relevant markets. In developing national competition policies, governments have recognised the key role that competition plays in driving efficient outcomes in consumer choice, pricing, productivity and innovation.

Over time, competition between providers of a service will tend to keep charges to the minimum needed to provide the amount, type and quality of service demanded by consumers. Competition will also generate dynamic efficiency gains as producers compete to meet the changing needs of the market in the most cost-effective way.

Despite the absence of restrictions on practice, regulation of architects may still have impeded competition in various ways. Restrictions on the use of the title architect and its derivatives may unnecessarily constrain information available to consumers about competent providers. In addition, restrictions on advertising by architects in several jurisdictions may limit competition between architects and also their ability to compete with others in the building design and related services market. Further, competition is affected and costs are imposed on architects by requirements for registration or approval of architectural partnerships and companies.

Other provisions of the various Architects Acts also may affect competition and efficiency in the market for building design and related services. These various impacts are considered below by type of restriction contained in the Acts.

There is only limited direct evidence of the competitive and efficiency impacts of the restrictions contained in the Architects Acts and significant data limitations preclude exact quantification of the costs involved. However, the general size of the effects and the markets in which they arise can be postulated.

7.2 Costs of restrictions on the use of title and derivative terms

While the exact restrictions vary between jurisdictions, the major restriction on competition imposed by the Architects Acts is to limit, to those registered under the Acts, the use of the title architect or any other words, titles or letters that might imply that a person or business is registered under the Act. Those who have obtained qualifications in architecture generally are not prevented from publicising these.[1] However, persons with tertiary qualifications acceptable for registration, are not allowed to use the title architect or to indicate that they provide 'architectural services', unless they complete the other requirements for registration.[2]

Because the practice of building design is not restricted by the Architects Acts, the costs imposed by title provisions are unlikely to be large. Costs will reflect constraints on the information provision process which indirectly inhibit consumers' ability to switch between architects and others providing broadly substitutable services. Any additional search costs for consumers or promotion costs for non-architects represent costs of restrictions of title and derivatives contained in the Acts. For those groups of consumers which predominantly use architects, fees are likely to be somewhat higher than otherwise because competition from possibly lower cost alternatives is somewhat inhibited.

If other suppliers in the building design and related services market were able to qualify as architects, then supply responses would compete away any increased returns to architects. This would negate the need for extra search activity by

1 David Beetson (sub. DR387) indicated that in a Court of Petty Sessions of Western Australia judgement, the inclusion of his Bachelor of Architecture degree in an advertisement was found to constitute advice to the public that he was professionally qualified as a practising architect. Nevertheless, the Architects Board of Western Australia (trans., p. 123) indicated that there was no prohibition on unregistered graduates using Bachelor of Architecture after their name.

2 In New South Wales those with accredited qualifications may register as a non-chartered architect (s. 13(1)) and use the title architect if working for a chartered architect.

consumers. However, as discussed below, the registration requirements of the Acts are quite stringent and generally preclude registration by other building design professionals with different combinations of qualifications and experience.

The RAIA (sub. 16) observed that architects provide a broad range of advice and services and, in effect, compete in a number of markets. However, those who wish to use the title architect generally will provide building design as a core part of their service and it is in this market that any costs of the Architects Acts will be most apparent.

Costs of restrictions on use of the title architect

Limiting the use of the title architect places some restrictions on the ability of those not registered as architects to compete in the market supplying building design and related services. Many architects (for example, Michel Greenhalgh, Philip Kirke, Alan Holbrook and Emilis Pregauskas (subs 15, 17, 19, DR420)), argued that architects offer a clearly superior service to non-architects and hence that exclusive use of title improves the accuracy of information available to consumers and the quality of the built environment. These issues are discussed in chapter 5.

In a similar vein, the University of Queensland argued:

> The arguments for increased competition totally fail to recognise the fact that there are no equally trained or experienced professionals who are prevented from registering. Therefore, the draft report is really suggesting that lesser trained and experienced designers should be able to present as equivalent professionals. This is actually deceiving consumers, not protecting them. (sub. DR480, p.1)

In contrast, the Building Designers Association of Australia (BDAA) suggested that legislated protection of title can mislead consumers:

> 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. (sub. 40, p. 9)

The BDAA view implies that restriction of title generates costs in provision of information to consumers. If consumers are to make informed choices to suit their particular needs and budgets, they should be aware of the existence and capabilities of available alternatives. Restrictions on title provide some information to consumers about one group of service providers, but at the potential cost of lessening consumer awareness of the existence of other providers, and thereby reducing competition. While non-architects are still able to promote their services, title restrictions make this task more difficult.

The term architect has been appropriated over the last 60 years by those registered under the Architects Acts, to refer to someone with accredited university training, a certain level of tested practical ability (largely obtained by training in an architect's office) and who is subject to a professional (legislated) code of conduct.[3] If this were also what most consumers have come to understand architect to mean, then any negative impact that title restrictions may have on information available to consumers will be small, as long as they also know about the services of non-architects.

As noted in chapter 2, even in the absence of the Architects Acts, use of professional titles such as architect is already broadly limited by the consumer protection provisions of the *Trade Practices Act 1974* and complementary State and Territory laws (ACCC 1999). Many design practitioners (including some with Bachelor of Architecture degrees) who might not infringe these provisions if they used the title architect, but who would contravene the Architects Acts, have taken the label 'building designer'. Yet, the BDAA has indicated that most of its members are unlikely to use the title architect even if Architects Acts were repealed:

> Most BDAA members report they do not covet the use of the term 'architect' should its use become more freely available, preferring the term 'Building Designer'. (sub. DR440, p. 2)

This view was supported by the Victorian and Queensland branches of the BDAA (trans., pp. 587–90 and pp. 315–16 respectively) and by a number of individual non-architects such as Michael Wiegmann (sub. 379) and David Walker (sub. DR448).

The impact of title restrictions on availability of information to consumers, and hence on competition, is likely to vary between sectors of the building design and related services market (chapter 3). 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.

The success of non-architects in the residential market suggests that many consumers are aware of available alternatives. Nonetheless, restrictions on title use may result in some residential consumers not being alerted to alternatives to architects, or being misguided by a government-mandated label.

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3 Before the introduction of the Architects Acts, those using the title architect ranged from persons with formal qualifications and experience in an architect's office to those with no formal qualifications and building industry experience.

It is not only non-architects who are constrained by title restrictions. In most jurisdictions, multi-disciplinary enterprises containing architects can only use the title architect or its derivatives if they comply with stringent ownership requirements. These restrictions impose costs on architects and consumers which are discussed further in section 7.3.

Costs of restrictions on the use of derivative terms

Evidence from those competing directly with architects indicates that restrictions on use of derivatives of the word architect have been more significant in reducing their ability to compete. These restrictions impose more severe limits on architects' competitors providing information about the alternatives available to consumers. Many of the qualifications held by non-architects in the building design and related services market, such as diplomas in architectural technology or architectural drafting, contain the derivative architectural. While there are no restrictions on advertising their qualifications, the Architects Acts prevent these graduates from claiming to provide architectural services.

The BDAA argued that:

> 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. (sub. 40, p. 6)

Although building designers and other professions successfully offer some or all of the services that are commonly understood to be architectural services, they are not able to advertise in any way that might imply that they are registered as architects, even if they do not describe themselves as architects. Michael Wiegmann stated:

> I don't want to call myself Michael Wiegmann Design because you might ring me up and want a teapot designed. I do architectural design. I don't do engineering design. I don't do electrical drafting. I don't do civil drafting. I do architectural drafting, and so it's a word in the English language. (trans., p. 412)

Tony Iseppi (representing the Building Designers Association of Victoria) observed:

> I can do eight years' night study and 25 years in direct competition with architects and I can't use the words 'architectural service'. (trans., p. 590)

On the other hand, the Board of Architects of New South Wales argued in favour of restricting use of derivatives:

> Without adequate legislation consumers may not be able to readily identify persons and organisations which offer 'architectural' services as having the required skill to provide and carry out services at a level to meet their needs at all … It is only by the reservation

of the title architect and derivatives by legislation that consumers may be assured that they receive the services of a qualified person or organisation. (sub. 35, annexure B, p. 14)

The continuing success of non-architects indicates that many consumers consider their services to be of a similar nature to those provided by architects, and of sufficient quality to meet consumer needs (chapter 3). Several participants from the building design sector (for example, the BDAA (sub. 40), Michael Purtell (sub. 374) and James Frewin (sub. 377)) argued that non-architects, such as building designers, were capable of providing good quality building design and related services on a wide range of residential and commercial projects. Box 7.1 gives examples of some of the work of non-architects.

Box 7.1 **Work undertaken by non-architects**

- Alistair Knox (a bank clerk who studied architecture and building), popularised the use of mud brick building in the post-war period. Knox designed and built close to 90 mud brick residences around Eltham, in Victoria. His designs were innovative and varied, partly reflecting the surrounding undulating landscape, and his buildings made considerable use of natural materials. Homes designed by Knox are now highly sought after by consumers (Howard 1992).
- Non-architects designed the Darwin Cruise Ship Terminal and the interior of the Queen Victoria Apartments in Adelaide. In Victoria, they have undertaken projects including educational institutions, supermarkets, churches, restaurants, sporting facilities, entertainment venues, aged care facilities and offices (Building Designers Association of Victoria, pers. comm., 14 April 2000; BDAA 2000).
- Local landmarks such as the Tweed Heads wharf development, the Goulburn Wool Store, Barry's Guesthouse on the NSW south coast and the Old Sydney Town heritage park are the work of building designers (Building Designers Association of New South Wales, pers. comm., 14 April 2000).
- The BDAA building design awards indicate a wide variety of housing, industrial and commercial projects undertaken by building designers, ranging from restaurants to guesthouses, car parks and heritage buildings (BDAA 2000).
- David Walker (a building designer) outlined a number of projects currently being undertaken by his firm, including a car showroom, multi-unit townhouse development and a motel, and noted that he had won local government design awards (sub. 378; trans., p. 412).

Restrictions on use of derivative terms, although reducing the likelihood of consumers mistakenly choosing a non-architect (that is, someone who is not registered), place limits on appropriate information being made available to consumers regarding alternative sources of building design and related services.

They may increase consumers' search costs and create some difficulties for non-architects in making consumers aware of their services. To the extent that there are non-architects who are capable of providing similar services to architects, such impediments will result in a lower demand for building design and related services than would otherwise occur, a distortion of the mix of demand between architect and non-architect providers and probably some increases in costs.

In most jurisdictions the restriction on use of title and derivatives extends beyond the building design and related services market.[4] There is no benefit to consumers or the broader community of such a wide-ranging restriction of title. Architect and architecture are terms increasingly used outside the building industry — particularly in the computer industry — to describe different types of systems and their creators. Pursuit of such breaches imposes unnecessary costs on those who have no intention of portraying themselves as providers of building design services.

The existence of open-ended title restrictions in most Architect Acts creates potential for use of the Act for purposes clearly not intended by the legislatures. For example, the Australian Council of Building Design Professions (sub. DR457) observed that (except for South Australia) the Architects Acts, in giving qualified exemption from title restrictions for landscape architects, do not define that term. It argued for limiting the exemption to those eligible for corporate membership of the Australian Institute of Landscape Architects. Use of the Architects Acts to provide title protection outside the building design and related services market would distort information provision in those sectors while not furthering the apparent intentions of the Acts.

Indirect restrictions on practice

Architects Acts contain no restrictions on the provision of services such as building design, documentation and project management.[5] This is a crucial factor in determining the anti-competitive effects and costs of the Architects Acts. As discussed in chapter 3, despite restrictions on the words and titles they can use, non-architects have been able to achieve a significant share of the building design and related services market, particularly in the residential sector. This has only been possible because practice has not been restricted.

4 The Victorian Architects Act (s. 4(c)) (not under review) only limits the use of the words architecture and architectural in relation to building design and plans.

5 The Architects Acts of Queensland (s. 88(7)(d)), South Australia (s. 28(3)(a)) and Western Australia (s. 29(2)) specify that nothing in the Act prevents anyone from designing or supervising the erection of any building.

Regarding the extent of competition, Kent Lyon, an architect, observed:

> From my perspective as a sole practitioner I am constantly faced with competition whether it be from within my own profession or from either qualified or unqualified draftsmen/designers. (sub. 45, p. 1)

Reddaway Enterprise, consulting engineers, stated:

> From my observations, I believe that architects are currently in strong competition amongst themselves and with lesser-qualified building designers. (sub. 2, p. 2)

The Trade Practices Commission (TPC) concluded:

> While current regulations may prevent certain groups of qualified building designers from describing their qualifications or using derivatives of the title 'architect' when promoting their services, these practitioners appear to be able to operate effectively in the market for building design services. The Commission therefore concludes that current restrictions on use of the generic title 'architect' and its derivatives are not having a significant effect on competition. (TPC 1992b, p. 51)

Nonetheless, title restrictions indirectly limit competition for architects in particular market segments. The *Queensland Building Services Authority Act 1991* restricts design of projects over 25 metres in height to architects. For the commercial building sector this means that the title provisions of the Queensland Architects Act indirectly impose restrictions on competition in the market for design services as an important, often lower cost, alternative is unavailable. Additional restrictions on the activities of non-architects further constrain their ability to compete with architects and inhibit competition between differently qualified non-architects. The Queensland Building Services Authority Act also requires non-architects wishing to undertake building supervisory duties, which can be part of a design brief, to obtain separate registration as a builder. Architects are not required to meet these requirements.

The South Australian *Liquor Licensing Act 1997* allows the licensing authority to specify that plans required to accompany applications for licences and approval of proposed alterations, must be certified by a registered architect or a registered surveyor. Although the design and related work for construction or alterations of licensed premises may be undertaken by non-architects, these provisions, if activated, would provide some advantage for architects in seeking such work.

The South Australian *Building Work Contractors Act 1995* deems architects to hold unrestricted building works supervisors registration. This provides architects with some advantage over other design professionals who must separately qualify for registration if they wish to undertake any building supervision work that may be related to a design brief.

In addition, discussions with various levels of government indicate that they tend to make greater use of architects, rather than other design professionals, compared with the commercial sector (chapter 3). The BDAA argued:

> 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. (sub. 40, p. 7)

Chapter 3 notes the pre-qualification procedures commonly used by government purchasers in selecting design service providers. To the extent that government buyers' decisions are based on a desire to reduce the risk of sub-standard outcomes, they may represent an efficient consumer choice. However, if some non-architects who are capable of providing good quality architectural services are excluded from consideration, those consumers seeking only architects will have unnecessarily limited their choices and avenues for potential competition will have been restricted.

The BDAA cited examples of such restrictions:

> I think another example in New South Wales is the Olympic Village, or certainly the athletes' village, which is virtually 100 per cent residential in character and none of our members were in a position to even tender on that. Our viewpoint on that is in reality we believe that, given more competition, I think the public sector's costs in this area would necessarily go down. (trans., p. 374)

David Walker, a building designer, estimated that his firm designed at least 40 per cent of multi-unit housing developments in the Penrith area in Sydney, but indicated that he is never given the opportunity to tender for Local or State Government housing developments.

While the Commission is not in a position to assess the relative competencies of architects and non-architects, the success of the latter in obtaining significant amounts of private sector work suggests that at least some non-architects are producing good quality output which competes directly with architects. Statutory pre-qualification rules on the basis of titles or qualification may unreasonably rule out some practitioners with demonstrable competency.

Costs of registration requirements

The extent to which title restrictions affect competition and the usefulness of information available to consumers, will depend partly on the statutory standards set for registration and the way in which these are administered by the Architects

Boards. These standards will affect architects from other jurisdictions and overseas, new architecture graduates and existing practitioners in the building design and related services market who might seek registration as architects. Any anti-competitive impacts of registration standards will also depend on the extent to which the practice of architecture is restricted. The absence of practice restriction in Architects Acts significantly lessens the potential for registration standards to inhibit competition unnecessarily.

Competition from interstate and overseas architects

Participants have indicated that for individuals registered in one Australian jurisdiction, obtaining registration in another jurisdiction presents no difficulties. Even prior to the introduction of mutual recognition of registration, there appear to have been few problems in this area. Hence the Architects Acts have not provided significant impediments to interstate competition between individual architects — either in terms of interstate migration or trade.

However, as observed in chapter 8, there are some costs for companies and partnerships due to inter-jurisdictional differences in registration requirements. Any consequent reduction in competition may be important in the non-residential market where larger enterprises play a more important role.

Permanent immigrants who wish to register as architects in Australia need first to have their overseas qualifications assessed by the Architects Accreditation Council of Australia (AACA). Depending on the outcome, they may then follow one of the two streams to obtain registration available to Australian-born applicants (chapter 2). In recent years, about 50 permanent immigrants per year have applied, when resident in Australia, for assessment of their academic qualifications by the AACA. This represents around 0.6 per cent of the estimated number of practising architects in Australia. Though aggregate anti-competitive effects of procedures to register immigrants are likely to be small, it is important to ensure fairness to applicants and the transparency of a process which is dominated by Australian architects.

The Commission has received only limited and sometimes confidential information from those critical of these procedures. The BDAA (sub. DR440) noted that a number of its members with overseas qualifications had experienced difficulty in obtaining registration in Australia. Fayek Azer (sub. DR400), who is registered as an architect in Belgium with qualifications deemed academically equivalent to Australian requirements, complained of his failure to be registered by the Board of Architects of New South Wales. He expressed concern that there was potential for

discrimination and bias in a registration process administered by registered architects.

In contrast, Professor John Cooper, who was trained in the United Kingdom, observed:

> In 1977 I was appointed as Head of Architecture at the South Australian Institute of Technology, and applied for registration to the Architects Board of South Australia. I was known to the Chair, Registrar and other members of the Board and registration was granted with a minimum of formality. (sub. DR394, p. 1)

Joseph D'Ambrosia (sub. DR414), an architect with qualifications from the United States, argued that the AACA tests required for registration of immigrants should be made more difficult. On the other hand, he also questioned the form of assessment:

> I think the AACA exam should be made more objective with technical multiple choice questions and essays rather than the existing subjective two half-hourly oral examinations. The personality factor can cloud what you are tested on. (sub. DR414, p. 4)

As with locally trained non-architects, permanent immigrants unable to obtain registration are not prevented from practising in the building design and related services market, but they cannot promote their services using the title architect or its derivatives.

Overseas-based individuals and firms wishing to refer to themselves as architects in Australia need to be registered by an Architects Board. Mutual recognition provides automatic registration for firms or individuals that are registered in New Zealand. The AACA (sub. 55) has indicated that it is pursuing more such agreements, particularly with APEC countries. Using their discretionary powers, Boards generally provide 'fast track' registration to recognised international architects who obtain commissions in Australia. Often foreigners form alliances or joint ventures with local architectural firms in order to have access to knowledge concerning local conditions and regulations.

However, less well known practitioners would be subject to closer scrutiny. If applied strictly, the domestic experience and Architectural Practice Examination (APE) requirements would appear effectively to rule out immediate registration in most cases. However, given Australia's geographic isolation, instances of practitioners from smaller firms seeking work here are likely to be limited. In any event, they would not be prohibited from practising but only from using the title architect.

Registration of new entrants

Chapter 2 outlines the requirements which the Architects Acts and the Boards impose in determining whether to register a person as an architect. Those with approved tertiary qualifications need to acquire at least two years' experience in an architect's office and pass the APE coordinated by the AACA.

Those without accredited tertiary qualifications, but with at least seven years' design experience, and where at least three of these are in an architect's office, may attempt the AACA's National Program of Assessment. If successful, they must then meet the approved experience (which they may already possess) and APE requirements of the Boards to become an architect.

The Boards (and indirectly, with respect to tertiary qualifications, academic institutions) are given the power to put these requirements into practice and thereby affect the supply of architects. Because the standards for registration will impact on the number of architects, there is potential for the registration process to restrict competition within the architectural profession and hence the building design and related services market as a whole.

As noted above, the costs imposed by restrictions on use of title will depend partly on how many practitioners capable of meeting consumers' requirements are excluded from using the title architect or its derivatives. If educational standards and other registration requirements are excessive or inappropriate, there will be a cost to some consumers who would then receive less relevant information from any practitioners unnecessarily excluded from using the title architect or its derivatives.

The implementation of the registration process is in the hands of the Architects Boards and not the profession. However, the majority of Board members are architects — many of whom are RAIA office holders or members — or, in most jurisdictions, representatives of tertiary institutions. Their interests may favour unnecessarily formal registration standards which raises the cost of entry to the profession. Though the Commission is not in a position to judge whether this is the case, the absence of consumer input in the Boards' consideration of appropriate registration standards and the limited competitive pressure on registration Boards and academic institutions, raises some concerns.

William Curnow, an architect, argued:

> The current system of training, registration and practice for architects needs to be overhauled. The system currently does not produce an end product capable of performing the service demanded by society. (sub. 145, p. 8)

Jeffrey Keddie (sub. 34), a former registrar of the Architects Registration Board of Victoria, argued that the APE was an unnecessary procedural and financial barrier to registration after five years of study and at least two years' experience.

Moreover, architects operate in a variety of markets ranging from low-value residential to major commercial building and construction projects. These may require different types and levels of training. The primary method of registration of architects, with a five-year university course as the minimum educational requirement, does not reflect this diversity. The alternative method of registration requires an extensive period of experience, partly in an architect's office. To the extent that different levels and types of qualifications and practical experience are appropriate for different market sectors, the current registration standards could create unnecessary training costs for architects and provide distorted information to consumers.

Disagreeing with this view, the AACA argued:

> Those responsible for accreditation of architecture courses are carefully selected to represent a variety of market areas and are highly responsive to consumer interests in setting the course education should take. (sub. DR465, p. 7)

The Queensland University of Technology (sub. DR459) observed that the five years' academic study plus two years' experience model for certification was supported by a number of international architects' bodies. The RAIA noted that:

> In most countries, architectural education is conventionally delivered by 4–6 years full-time academic education at a university (followed in some countries, by a period of practical experience), though there are important variations (part-time routes, work experience etc.). (sub. DR441, p. 17)

A number of architects argued for high standards of qualifications. The Association of Consulting Architects of Western Australia stated:

> Australia as a young country does not yet have a built environment heritage or the commitment to urban design of older nations. If we are to become a clever country and improve the quality of life for all Australians, it will not be assisted by the deregulation of standards of excellence. Qualification levels need to be regularly tested to ensure they are set high enough. (sub. 75, p. 1)

Because of title restrictions, university faculties providing architecture courses prescribed by the Boards may receive some advantage in the education sector. Students with the objective of becoming registered as an architect must undertake one of these courses. This may lessen responsiveness to the needs of students, and ultimately the needs of consumers of architectural services, when setting courses.

On the other hand, the periodic assessments of courses by the Boards, which include discussions with students, should provide some check to course content becoming too far removed from the needs of architectural practice, as seen by the Boards. Stephen Frith, Professor of Architecture at the University of Canberra, supported the current system:

> The accrediting procedures for architecture schools in Australia work well at the moment. There is recognition of the interests of government and of the profession through the separate participation of the various Boards of Architecture, the RAIA, and from visiting academics from other states. A departure from this balance of interests would significantly weaken this accreditation procedure. (sub. 44, p. 2)

Nonetheless, the main rationale for the registration system is to benefit users of architects' services. Hence the appropriate educational standards for registration should significantly reflect the need to satisfy consumers' requirements for building design and related services.[6]

FINDING 7.1

The registration provisions (including educational standards) of the current Architects Acts (under review) are important determinants of the anti-competitive impact of those Acts. The absence of significant consumer input and the predominance of architects in setting these standards raises concerns that they may not be targeted sufficiently at the needs of consumers in the building design and related services market.

Evaluating the cost of title restrictions

In general, any impediments to competition are likely to result in higher prices for consumers and a reduction in quantities consumed. Data presented in chapter 3 indicate that, on average, income of architects is somewhat lower than those of comparable professions. However, architects' fees appear to be somewhat higher than those of some non-architects. This may, in some cases, reflect a more extensive or better quality service. However, in some markets, it may also partly indicate failure by consumers to consider lower-cost alternatives, reflecting the division of the supply of building design and related services created by the Architects Acts.

In some industries (for example, monopoly public utilities) producers dissipate returns available from market power in over-servicing or other excessive costs,

6 Architecture faculties will also need to meet university requirements for course content and structure which could conflict with the perceived needs of consumers of architectural services. In addition, architecture courses provide more general training which will be useful outside the field of architecture.

rather than taking them purely as large profits. However, the absence of restrictions on practice suggests that the Architects Acts bestow only limited market power on architects and that relatively low average incomes largely reflect this competition, rather than indicating inefficient practices.

Nonetheless, registration requirements may impose unnecessarily high costs on architects. There may also be longer-term dynamic costs due to title restrictions. If architects and educational institutions rely on title restrictions to protect them from competitive pressures, rather than adapting to changing market needs, they may fail to respond to market pressures and signals.

Despite apparently low pecuniary returns relative to training, architecture degrees continue to attract applicants with high tertiary entrance scores. The RAIA (sub. 16) indicated that many architecture graduates do not go on to practise architecture and the course opens up opportunities in other fields, particularly in the design area, which may provide better monetary returns than architecture. Architecture graduates also may gain non-monetary satisfaction from the nature of their work and the ability to work in their own business. In addition, graduate course experience surveys (GCCA 1999a) indicate that, compared to graduates in other professions, architecture graduates gave the courses relatively low overall satisfaction ratings.[7] This suggests that initial expectations may not have been fulfilled.

The University of Melbourne argued that these unfavourable graduate views might reflect 'a profession that is under attack by a community that is suspicious of cultural endeavour' (sub. DR453, p. 1). However, the advantage given to architecture courses prescribed by Architects Boards may make it easier to continue providing courses which do not meet students' expectations.

FINDING 7.2

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. The restrictions on the use of derivative terms, such as 'architectural', generate greater costs by limiting the type and quality of information that can be provided to consumers, hence restricting competition. Also, there are important indirect restrictions on competition in some markets. These include the Queensland building market, where practice is restricted by other related legislation, and all levels of the government

7 These ratings are based on responses to the statement 'Overall, I was satisfied with the quality of this course'. Respondents chose from five categories ranging from 'strongly disagree' to 'strongly agree'.

sector which, in purchasing building design and related services, often exclude non-architects from consideration for types of work in which they have clearly demonstrated competency in the private sector.

7.3 Restrictions on ownership of architectural businesses

As outlined in chapter 2, all jurisdictions except Tasmania and the ACT have provisions which place requirements on the membership, ownership and control of partnerships and companies that wish to use the title architect or its derivatives.[8] These restrictions are designed to ensure that a partnership or company structure is not used to circumvent title restrictions. They also are designed to prevent decisions regarding architectural matters being unduly influenced by non-architects. At the time these restrictions were introduced, single-discipline practices predominated and architects were more likely to provide all services from design through to management of the entire building project.

Most large building projects are undertaken under the auspices of partnerships and companies. Thus these restrictions inhibit competition between those businesses comprising mainly architects and other businesses that offer architectural services as part of a range of services to the building industry. William Curnow (sub. 145) argued that ownership restrictions also limit the ability of architects to bring in joint owners with business skills which may assist the quality and efficiency of the practice. In addition, the ability to attract capital investment in enterprises undertaking architectural work may be inhibited by the ownership restrictions placed on the use of title. Gutteridge Haskins & Davey (sub. 383), a consulting engineering company, noted advantages to consumers of fully integrated design, easier contact with a single entity and the efficiency of a team approach.

The Board of Architects of New South Wales argued that:

> Attempts to have a majority of controlling shares in the hands of an architect(s) would run against architects publicly being able to practise through a public company or through a multi-disciplinary company or for that matter with a building company, and would therefore run against such companies having the opportunity to include 'architects' in their descriptor of services, all of which would be anti-competitive. (sub. 35, annexure B, p. 44)

8 Unlike most other jurisdictions, New South Wales does not require partnerships or companies to be registered or approved. It is sufficient for entities to meet the ownership requirements of the Act, although the Board of Architects does maintain a voluntary register of complying businesses.

The Board (sub. 35) also indicated that large enterprises wishing to establish multi-disciplinary practices had expressed concern about ownership restrictions. The Board's preferred position is that any business should be able to use the title architect as long as architectural services are under the direct supervision of an architect.

Similarly, the AACA's National Legislative Guidelines, agreed on by the Architects Boards in all jurisdictions, state:

> Whether a business uses the word architect or a derivative in its business name … or chooses not to … the critical requirement is that the architectural services are being provided by an architect. (sub. 55, appendix 2, p. 7)

However, the Association of Professional Engineers, Scientists and Managers, Australia submitted that:

> Whilst we support further development of multi-disciplinary practices, we have not seen any evidence to suggest that the current legislative restriction on the term 'architectural services' limits the development of these firms or the ability of those firms to compete in the market place. (sub. 68, p. 1)

The RAIA (sub. 16) supported a system where architectural services of registered entities are under the control of an architect, and a majority of partners, directors or shareholders with majority voting rights are architects.

It is not only large enterprises that are inhibited by the current ownership restrictions. Vines (1996) indicated that a partnership of a registered architect with 20 years' experience and an historian, in which architectural matters were handled by the architect, was unable to use the title 'architectural and heritage consultants' in South Australia. The practice now uses the title 'conservation and heritage consultants'. Such restrictions deny consumers relevant information about available services while not providing any apparent public benefit.

Evidence presented to the Commission suggests that ownership restrictions limit significantly the flexibility available to architects in organising the way they provide services. To the extent that architects conform with them, they may add to costs by requiring businesses to organise in a sub-optimal manner. If architects decide not to adopt the required business structures, they lose the right to use their title and derivatives, hence consumers receive less accurate information and competition is inhibited. The extent of these costs is likely to increase if the multi-disciplinary approach to delivering professional and financial services to larger construction projects continues to increase in importance.

FINDING 7.3

In most jurisdictions, ownership restrictions on companies and partnerships wishing to use the title architect and its derivatives impose costs by restricting the transmission of relevant information to consumers, and by inhibiting the efficient development of multi-disciplinary enterprises and the efficient structure of architectural practices.

In addition, there are important competition and cost implications arising from the differences between jurisdictions in requirements for companies and partnerships wishing to use the title architect or its derivatives. The AACA (sub. 55) observed that ownership of architectural practices is the area where least national uniformity currently exists. These issues are further examined in chapter 8.

7.4 Restrictions on advertising by architects

As detailed in chapter 2, the Architects Acts of South Australia and Western Australia — under codes of professional conduct — place some restrictions on advertising by architects, that potentially limit the extent of competition between architects in those States.[9] These restrictions on architects are enforceable by the Boards under the disciplinary provisions of the Acts. Since the restrictions on use of title have already placed some limitations on the ability of other design professionals to compete with architects, any inhibition of competition between architects requires close scrutiny.

The South Australian restrictions, although quite detailed, amount to little more than accuracy in advertising requirements. The Western Australian restrictions potentially are more intrusive as they require Architects Board approval for advertising. Although no advertisements have been rejected in recent years, the need to obtain Board consent may have influenced the type of advertisements put forward. Only advertisements containing material considered by the Board to be emotive or misleading are likely to be rejected.

9 In South Australia, by-law 38(7) made under s. 35(e) and in Western Australia s. 22A(1)(i). In the Victorian Architects Act (not under review here), regulation 16 — relating to professional conduct — requires that architects in advertising must ensure that information is accurate and current.

The RAIA considered that advertising restrictions had little impact on competition between architects:

> Restriction on advertising is a relatively minor impediment to competition between architects in practice and it could be argued that, since all architects are subject to the same restriction, competition between them is not impeded. (sub. 16, p. 17)

Although in such cases all architects would face the same restrictions, all would be inhibited in their communications with consumers. The impact of such restrictions, whatever the professional conduct rationale given for imposing them, would be to limit competition between architects, thus underpinning higher fee levels.

The Architects Board of South Australia (sub. 137) considered that the limits placed on advertising by its Act had not restricted competition between architects. Nonetheless, it argued that the advertising restrictions should be removed as provisions in fair trading and trade practices legislation provided sufficient protection for the public. The AACA (sub. 55) also indicated that, while it was not aware of advertising restrictions impeding competition, it considered these provisions should be removed.

Advertising restrictions may also limit competition between architects and other design professionals. Kent Lyon argued:

> The current restrictions on the advertising of architects under the Western Australian Architects Act 1921 limit our ability to inform the public of the services we as qualified professions are able to provide. (sub. 45, p. 2)

Stephen Brown, an architect, made similar observations regarding the impact of traditional attitudes of architects' organisations to advertising:

> Architectural Institutes, on a National level, are only now beginning to emerge from a slumber that has seen their members' client-base being eroded on all sides. The Institutes' ethics of disallowing advertising because it would lead to unhealthy competition between architects in the market place, was born of a time when only architects were in that market place. Nowadays the competition is in the form of developers, designers, package-dealers, draftpersons, builders and so on, all offering a cut-price service. (sub. 32, p. 2)

The RAIA (sub. 16) also considered that advertising restrictions significantly impeded competition between architects and other providers of similar services.

In professions with control over practice as well as title, advertising restrictions which limit competition within the profession allow higher prices to be charged. However, on their own, restrictions on title provide only a small buffer against competition. To the extent that legislative limits on advertising have constrained architects from adequately promoting their services and abilities, they are likely to

have been to the detriment of both consumers and architects, and to the advantage of non-architects.

FINDING 7.4

Restrictions on advertising by architects contained in the South Australian and Western Australian Architects Acts, impose costs on both consumers and architects by unnecessarily limiting the flow of information to consumers. Fair trading legislation already provides adequate protection for consumers.

7.5 Other restrictions

The disciplinary codes of the various Architects Acts contain a number of restrictions which might reduce competition and add to costs faced by consumers.

Supplanting

The professional code of conduct in the South Australian Architects Act makes it a disciplinary offence for an architect knowingly to seek a specific architectural commission already awarded to another architect — a practice referred to as 'supplanting'.[10] There is no restriction on supplanting a non-architect, suggesting that the behaviour as such is not considered unprofessional, merely its application to another architect.

To the extent that such provisions discourage undermining of legally binding contracts, they do not impose unnecessary restrictions. Nonetheless, contract law should provide adequate remedies against such behaviour without the need for special provisions in the Architects Acts. Of more concern is the situation where anti-supplanting provisions might lessen the intensity of the competitive process and, in particular, restrict consumers' options in cases where there are grounds for terminating an architect's commission. Referring to the provisions in Victoria, Jeffrey Keddie stated that 'in my experience, even this constraint served only to assist those architects who objected to clients taking business elsewhere' (sub. 34, p. 22).

The TPC (1992b) concluded that these supplanting provisions were not anti-competitive as submissions to the TPC review indicated that competition for new commissions was not restricted by supplanting rules. The AACA National Legislative Guidelines do not contain provisions relating to supplanting.

10 The Victorian Architects Act, which is not under review here, also contains an anti-supplanting provision in regulation 19 relating to professional conduct.

Restrictions on non-architectural activities

The codes of professional conduct in the New South Wales and Queensland Architects Acts both have explicit, albeit minor, restrictions on building activities that architects are allowed to undertake.[11] In both States, architects are required to obtain their client's consent in order to be free to undertake architectural work on a building for which they are also the builder. The costs of this restriction on architects' ability to undertake development work would appear to be minimal. Ownership restrictions discussed above are likely to provide a much greater impediment to architects' involvement in development activities.

Minimum fees

Some architects have complained that current fee levels are inadequate to provide a proper service. Michael Harris, an architect, submitted:

> Already fee bidding is a growing malaise significantly sponsored by Government and Institutional Clients where price supplants quality and consequently 'value for money'. (sub. 142, p. 2)

Several participants (for example, Keith Neighbour (sub. DR402), Robert Bland (sub. DR409), DEM Design (sub. DR452) and Brian Cunningham (sub. DR456)) cited CSIRO (2000) in support of this view.

The Architects Acts generally are silent on fees. However, the code of professional conduct in the South Australian Architects Act (by-law 38(2)(b)) stipulates that:

> An architect shall not undertake any architectural commission for a fee lower than that which would allow him to provide adequate and proper professional services.

If activated and supported by a recommended fee scale, such a provision could limit fee competition between architects. However, as there is no mandatory scale of fees for architects and given the difficulty of defining adequate and proper services and the level of fees needed to provide them, this regulation is likely to have had no effect on competition. In most markets, the competitive pressures applied to architects by a range of other professions offering architectural services would appear to have negated any attempts to maintain the concept of a minimum acceptable fee.

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11 The Victorian Architects Act (not under reference), deems that architects breach professional conduct standards if they act as both an architect and developer on the same project at the same time (regulation 8) or if they use the title architect in a business involved in development (regulation 9). These requirements are likely to place much greater restrictions on architects' activities than the New South Wales and Queensland provisions. In addition, regulation 12 places restrictions on advertising when an architect is engaged by a developer.

The Architects Board of South Australia (sub. 137) indicated that it did not see any public benefits in limiting the form and amount of architects' remuneration and argued for the removal of by-law 38(2). The TPC (1992b) recommended that references to minimum fees be removed to avoid the Board becoming involved in the issue of fees.

FINDING 7.5

A number of the current Architects Acts (under review) contain provisions (such as restrictions on non-architectural activities and supplanting) which impose small but unnecessary restrictions on architects' behaviour, imposing costs on both consumers and architects.

Cost of the Boards

The cost of operating the eight State and Territory Architects Boards is relatively small and in most jurisdictions is entirely met by registration fees paid by architects and other income of the Boards. Nonetheless, it represents a resource cost of the regulation. In 1998-99 the cost of operating the Architects Boards was under $2 million. If the Architects Acts did not exist, architects in Queensland and Victoria, where other design professionals are registered under building industry legislation, may be required to be licensed under those Acts (chapter 10). The Tasmanian Parliament currently is considering similar legislation. While inclusion of architects would add somewhat to the costs of administering those Acts, economies in administration costs would probably generate some small net savings. In the absence of any statutory certification, private certification regimes would be likely to develop and these would also incur administrative costs.

8 Current Architects Acts: consistency and duplication

The terms of reference direct the Commission to take into account the need to promote consistency of regulation between States and Territories and avoid unnecessary duplication. This chapter examines the extent to which duplication and inconsistency of current regulatory arrangements between jurisdictions affect the efficient operation of the building design and related services market in Australia.

The impact of alternative regulatory arrangements on consistency and duplication is canvassed in chapters 10 and 11.

8.1 Duplication of regulation

Jurisdiction-based legislation regulating architects has led to the establishment of eight individual Architects Boards, all of which perform similar functions, including maintenance of a register, the conduct of inquiries and investigations, and accreditation of courses (chapter 2).

Costs to architects and State and Territory Governments of maintaining the duplication of functions of the eight Boards are relatively small. For example, in 1998-99, expenditure by the Queensland and New South Wales Boards was approximately $312 000 and $470 000 respectively — the largest single item of expenditure being salaries and associated expenses.[1] Expenses are lower in jurisdictions with fewer registrations.

In all jurisdictions, except the Northern Territory, the Boards are entirely funded by the architectural profession, rather than government, through annual roll fees, registration fees and so on.[2] The only additional cost of duplication to government

1 In New South Wales, the Board is administered by a part-time Registrar, a full-time Deputy Registrar and an Administrative Assistant/Bookkeeper. In Queensland, two full-time personnel are employed (Board of Architects of New South Wales 1999; Board of Architects of Queensland 1999).

2 It is unclear whether the Architects Board of the Australian Capital Territory is fully funded by architects because the Board is part of the ACT Department of Urban Services and therefore does not operate separate accounts.

(albeit relatively small) is overseeing of the regulation by State and Territory Government departments, including the recent legislative reviews under the Competition Principles Agreement.

Variations in local building requirements, such as cyclone resistance in northern Queensland and the Northern Territory, are addressed in local building codes. Architects seeking registration in another jurisdiction do not have to meet specific local requirements — tertiary architectural qualifications and work experience accepted in any one jurisdiction are accepted in all other jurisdictions as part of the mutual recognition process.[3] However, architects operating in more than one jurisdiction have to incur the additional expense of registration in each jurisdiction (section 8.2).

A national approach, with a single administrator, would eliminate duplication. Multiple registration would no longer be necessary, nor would State and Territory Governments be required to oversee the legislation. It could be expected that a reduction from eight administrators to one would generate savings for the architectural profession. However, whether savings were generated in practice would depend on how the administrator, and its functions, were organised. For example, savings from fewer administrative staff would be greater if all functions were transferred to a national office than if jurisdiction-based sub-offices were established in conjunction with a national office. On the other hand, greater travel and related expenses may be incurred by those sitting examinations or making complaints.

FINDING 8.1

The continuation of eight separate Architects Boards is likely to impose some small additional costs on architects. There do not appear to be unique local conditions justifying their continuation.

Alternative regulatory arrangements which could involve a single national administrator, for example, the adoption of Commonwealth legislation and self-regulation, are discussed in chapters 10 and 11.

8.2 Consistency of regulation within Australia

A number of participants to this inquiry, for example, Graham Morgan (sub. 139), Gary Pullar (sub. 147) and the RAIA (sub. DR441), supported greater consistency

3 See box 8.2 for a description of mutual recognition.

in regulation between jurisdictions, particularly regarding the registration process. The University of Adelaide noted:

> … the current differences between State legislation create unnecessary restrictions on the practice of architecture across state boundaries or at a national level. These restrictions impose consequent additional time and costs in administration for both regulating bodies and architects. (sub. 41, p. 2)

Inconsistencies in regulation between jurisdictions may arise not only because of differing legislative requirements, but also because of varying interpretation and rigour in implementation of legislation. Inconsistencies in the regulation of architects exist (chapter 2) but, apart from those relating to companies, they tend to be relatively minor in terms of their impact on architects and the wider community.

Inconsistencies relating to the regulation of the conduct of architects, such as in advertising, were not raised by participants in terms of inhibiting, or adding to the costs of, interstate operations. Similarly, inconsistencies in the legislation prescribing the registration of individuals (for example, those relating to fitness of individuals for admission to the register and the role of the Boards in conducting examinations) were not raised as concerns by participants, although they did comment on mutual recognition (see below).

Moreover, no evidence has been presented to suggest that any other inconsistencies in regulation between jurisdictions are creating major impediments to interstate operations, or substantially adding to the costs incurred by architects or the wider community.

It also appears unlikely that inconsistencies between Australian jurisdictions unduly restrict Australian architects competing in world markets. This is confirmed by the RAIA (sub. 16).

Inconsistencies in company regulation

On the other hand, several participants commented on inconsistencies between jurisdictions regarding company ownership and registration requirements (inconsistencies are highlighted in chapter 2). These legislative requirements are in addition to those placed on companies by the *Companies Act 1981*.

The Architects Accreditation Council of Australia (AACA) commented:

> This is the area of least consistency throughout Australia. Some jurisdictions have no provision at all for the registering of companies, some have a voluntary system, others require that the majority of company directors or shareholders be registered architects. (sub. 55, p. 15)

Companies must meet these legislative requirements when operating in each jurisdiction if they wish to describe themselves (or advertise) as a company practising 'architecture' in that jurisdiction. They may choose not to do so, relying on reputation or describing themselves in ways that do not include the word 'architecture' or other derivatives. Also, if companies are working on only one project interstate they may choose to register an individual architect and have that person responsible for the work, rather than the company because, as discussed below, this is a much simpler process than company registration. Companies that choose to register in other jurisdictions need to ensure that the required proportion of their directors are registered individually as architects through mutual recognition in those jurisdictions (see below for a discussion of this process), and that the company itself is registered.

However, it is not possible (given data availability) to ascertain the number of architectural companies that have registered interstate, let alone how many are operating interstate.[4]

Company registration in another jurisdiction typically involves the process outlined in box 8.1.

Box 8.1 **Typical company interstate registration process**

The applicant company completes an application form, attaches its memorandum and articles of association, and pays an initial registration fee of between $100 and $220, depending on the jurisdiction. The application is then assessed to ensure that the company complies with the legislation. If not, amendments to the company's memorandum and articles of association may be required.

The application is approved by the relevant Board and a certificate issued. An annual roll fee of $90 to $200, depending on the jurisdiction, is then paid.[5]

4 Jurisdictions that register companies only keep a record of the total number of company registrations, not the number of registrations of companies initially registered in another jurisdiction. Postcode information for registrations does not assist because it cannot differentiate between companies registered in the jurisdiction that have shifted interstate and those companies initially registered elsewhere that have gained interstate registration. Nor is it possible to aggregate the company registration data to obtain the total number of companies registered in Australia because there may be multiple registrations, that is, companies may be registered in more than one jurisdiction.

5 As at February 1999 (Architects Board of South Australia, sub. 137, appendix B).

The RAIA was of the view that restrictions on company ownership were not a problem. It noted:

> The RAIA is unaware of any problems created for its members by the current restrictions on ownership of businesses wishing to use the title Architect or its derivatives or any adverse effect caused by them on consumers. (sub. DR441, p. 9)

On the other hand, several other participants expressed a different view. For example, the Architects Board of South Australia commented:

> The current slightly differing legislation in each State makes it difficult primarily for corporate entities to comply with each State's legislation. (sub. 137, p. 14)

And the Association of Consulting Architects (NSW Branch) noted, in relation to company ownership:

> The current system does force you into certain arrangements to try and fit within the particular rules in each state, there's no question. (trans., p. 442)

For companies with interstate operations, differing requirements for registration can add to company costs and inhibit expansion of operations interstate. Companies comprising architects only, operating interstate, can incur substantial registration costs as a result of legislative inconsistencies relating to, for example, sole director requirements. The costs are likely to be even greater for an architectural multi-disciplinary company that, in addition to architects, employs non-architects, such as interior designers, town planners, engineers and accountants. These companies, in ensuring that their structures comply with varying jurisdictional requirements, may have to adjust the proportion of architect to non-architect directors. This may be inefficient if some architects, rather than non-architects, become directors solely in order to boost the proportion of architect directors to meet legislative requirements.

Graham Morgan, an architect, in relation to the interstate operation of multi-disciplinary companies, commented:

> The position for organisations … is more complex, particularly when an organisation provides a wider range of products or services, of which architecture is but one, and not necessarily the predominant one. This difficulty for firms is exacerbated, as each State imposes slightly different requirements, which may not be able to be integrated into one set of company articles. (sub. 139, p. 1)

Additional costs can be significant if companies are obliged to establish separate legal entities in each jurisdiction or a holding company in order to meet varying legislative requirements. Commercial flexibility may be restricted by legislation enforcing rigid, and not necessarily efficient, company structures.

Gary Pullar (sub. 147) commented that the architectural company, Works Architects (a subsidiary of Gutteridge Haskins and Davey — a consulting engineering

company), has faced considerable problems in its endeavour to reconcile 'ultimately irreconcilable' legislative requirements. Registration has been achieved in New South Wales[6] and Queensland, and the process is now under way in South Australia, Western Australia and the Northern Territory. The company has been required to amend its constitution and to restructure in order to meet differing legislative requirements.

Additional costs of company registration include administrative costs in undertaking multiple registrations and the cost of multiple individual and company application and annual fees — which, although relatively small, can accumulate for a company that has to renew annually its registration, along with those of its architect employees, in several jurisdictions. The time taken to register in another jurisdiction may impose an additional cost if companies are impeded from taking advantage of commercial opportunities. Though the registration process may be relatively fast (if no amendments to the memorandum and articles of association are required, and a Board meeting is imminent), it could take several months if amendments are required that necessitate reorganisation of the company.

FINDING 8.2

Inconsistencies between jurisdictions regarding company ownership and registration requirements generate unnecessary additional costs.

Unincorporated businesses, such as partnerships, also may face barriers to interstate operations because of legislative inconsistencies between jurisdictions (chapter 2). However, barriers are likely to be substantially less than for companies because the legislative requirements are not as complex for unincorporated bodies seeking interstate registration, and unincorporated bodies are less likely to be multi-disciplinary in nature.

Addressing inconsistencies

Inconsistencies in regulation have been addressed in several ways, including the introduction of mutual recognition and the development of the AACA National Legislative Guidelines.

Mutual recognition

Mutual recognition is based on the premise that an individual registered to practise an occupation, such as architecture, in one jurisdiction should be able to be

6 Unlike other jurisdictions, New South Wales operates a 'voluntary listing'.

registered to practise an equivalent occupation in another jurisdiction. Importantly, it does not apply to the registration of companies or to other provisions of the current Architects Acts. Mutual recognition was progressively implemented by Australian Governments between 1992 and 1995, and the process, as it applies to architects in Australia, is described in box 8.2.

Box 8.2 **The mutual recognition process for architects in Australia**

An architect registered in one jurisdiction may apply for registration in another jurisdiction through mutual recognition. The process is relatively simple and fast — typically, an application form is completed, the applicant's current registration is verified (and a check undertaken to ensure there are no outstanding disciplinary procedures etc) with the initial registration body, and a registration certificate issued.[7] An application fee must be paid (ranging from $10 in Western Australia to $200 in New South Wales), together with an annual roll fee ranging from $45 to $100, depending on the jurisdiction.[8]

Prior to the introduction of mutual recognition, registration in another jurisdiction was relatively easy for applicants who had passed a practice examination (established in 1976), although the process involved verification of qualifications, experience etc. Mutual recognition substantially simplified the registration process for architects who were registered prior to the introduction of practice examinations, and who had not since passed it. Prior to mutual recognition, these architects were required to sit a modified exam (an interview) in the jurisdiction in which they were applying.

The lack of participant concern about inconsistencies in the registration process for individuals largely reflects the effectiveness of mutual recognition. Several participants (for example, the AACA, Constructive Women and the Architects Board of South Australia (subs 55, 141, 137)) commented favourably on the process in general.

The fact that many architects have been registered through mutual recognition suggests a degree of operational success. Registration through mutual recognition accounted for approximately 60 architect registrations in New South Wales in the last four years (including 22, or 20 per cent, of the 111 people registered in

7 An annual practising certificate may be issued in the ACT.

8 As at February 1999 (Architects Board of South Australia, sub. 137, appendix B). In addition, a small certificate fee is payable in some jurisdictions, for example, Queensland. The ACT operates a certificate of registration fee and an annual practising certificate fee.

1998-99), 64 per cent of those registered in the ACT in 1997-98 and 1998-99, and 32 in total in South Australia[9] (data are not available for other jurisdictions).[10]

Nonetheless, some participants considered that the mutual recognition process could be improved. The AACA commented:

> At a national level, while mutual recognition legislation enables recognition of architects around Australia, it is still illegal to practise in a State or Territory without being registered in that jurisdiction. This results in a significant number of architects carrying multiple registrations with consequent inconvenience and financial costs. (sub. 55, p. 5)

And it also noted that the current process:

> … is understandably seen as annoying, inconvenient and unnecessary. (sub. 55, p. 25)

These costs could be avoided if registration in one jurisdiction automatically permitted the registrant to practise anywhere in Australia. Several participants supported this approach. For example, Stephen Frith, Professor of Architecture at the University of Canberra, stated:

> An architect registered in one State or Territory of Australia should have the automatic right of being registered in any other State or Territory in Australia, with minimal changes to the existing regulatory arrangements. (sub. 44, p. 2)

The Commission agrees with these views on the need to improve the mutual recognition process.

FINDING 8.3

Additional costs are imposed on architects by multiple registration. If jurisdiction-based regulatory arrangements were to be retained in some form, costs could be reduced if mutual recognition enabled an architect registered in any one jurisdiction to be deemed to be registered in all other jurisdictions.[11]

9 Data for New South Wales to the year ended 30 June 1999 (Board of Architects of New South Wales, pers. comm., 10 December 1999). Sources for South Australian and ACT data: Architects Board of South Australia, sub. 137; ACT Government, sub. 381.

10 Most other jurisdictions provided data on the current number of registered architects with interstate addresses (sorted by postcode). This substantially overestimates the number of architects who have gained registration through mutual recognition because it also includes architects registered in a jurisdiction who have moved interstate but maintained their registration, and includes those who gained registration interstate prior to the introduction of mutual recognition.

11 Conversely, deregistration in one jurisdiction would automatically result in deregistration in all jurisdictions.

The introduction of a single national registration scheme, whether statutory or through self-regulation, would remove the issue of inconsistencies in registration and make mutual recognition redundant. These alternatives are discussed in chapters 10 and 11.

National legislative guidelines

The AACA and Architects Boards have adopted a national approach to the issue of legislative inconsistencies by developing and endorsing the AACA National Legislative Guidelines (box 8.3).

Box 8.3 **AACA National Legislative Guidelines: background**

In 1992 all State and Territory Architects Boards endorsed the National Legislative Guidelines developed by the AACA.

The Guidelines incorporate recommendations for national consistency in the Architects Acts (including regulations and by-laws). Rather than prescribing changes to legislation, the Guidelines set out principles that each jurisdiction can apply to its legislation as part of the review process. The effect is harmonisation of regulation, rather than complete uniformity.[12]

The Guidelines recommend rescinding some parts of existing legislation (eg clauses relating to company ownership), changes to other parts (eg assessment of an applicant's fitness for registration), and inclusion of new provisions (eg practising certificates[13] and continuing professional development).

Although endorsed in 1992, and amended since then, the Guidelines have not yet been implemented in any jurisdiction.

Source: AACA (1999).

Even though mutual recognition substantially resolves inconsistency issues related to the interstate registration of individual architects, the Guidelines recommend changes to the registration process. The Guidelines also address several other inconsistencies in legislation that were not raised by participants as impediments to interstate operation, for example, disciplinary procedures. These are discussed in detail in chapter 10.

12 Uniformity refers to regulations that are identical in different jurisdictions. Harmonisation refers to the process of aligning regulations across jurisdictions so that they are compatible, but not necessarily identical.

13 Currently exists only in the ACT.

Of particular importance has been the agreement by the Boards to support removal of registration requirements for companies and unincorporated businesses from the current Architects Acts in order to allow greater organisational flexibility.

However, because the Guidelines have not been implemented in any jurisdiction, they have, to date, done little to address inconsistencies. The potential for the Guidelines to improve the current Architects Acts is considered in chapter 10.

9 Current Architects Acts: assessing costs and benefits

Analysis in previous chapters of the benefits and costs of current legislation regulating architects is drawn together in this chapter, in order to assess, as required under the Competition Principles Agreement guidelines and terms of reference for this inquiry, whether the community benefits of the regulation outweigh the costs.

9.1 Benefits

In chapter 4, possible public interest justifications for regulation of the market for building design and related services are explored. These relate to potential problems arising from a lack of information on the part of consumers and the broader community effects of building design and construction.

The Commission agrees with the views of many participants that some consumers (especially those in the residential housing sector who use building design and related services infrequently) are likely to have less information than service providers. In addition, building design and construction have broad and long-lasting effects on the community. However, these are not reasons enough to justify regulatory intervention: information problems and spillover effects pervade many markets and transactions. The critical test is whether any particular intervention can enhance community welfare relative to the market outcome.

Competitive markets can, and do, develop a variety of mechanisms for alleviating information problems. This is driven by providers who recognise that, by supplying information and reassuring consumers, demand for their services (and thus their profits) can increase. For example, in the market for building design and related services, housing construction companies offer consumers 'off-the-shelf', guaranteed, fixed-price project homes. Consumers thus know what to expect in terms of design quality and price. Individual providers of design services inform consumers by developing and advertising their reputation, possibly bolstered by membership of a professional society or industry association which establishes a credible reputation.

Though the market may operate reasonably effectively for many transactions, in some cases, the potential harm generated by an incompetent provider may be unacceptably high to the community. For example, if undetected, structural defects can cause injury; in extreme circumstances, even death. Even if such occurrences were infrequent, the community may not be prepared to tolerate even a low level of risk. More generally, structural defects are likely to require expensive repairs and it may be more efficient to prevent poor construction rather than repair it when faults become apparent.

Incompetence or malpractice in the provision of building design and related services may cause consumers significant harm, particularly in relation to building safety and project management. Regulation aimed at improving the standard of relevant services and service providers may be warranted. Even where the risks appear less significant, it is feasible that regulation could facilitate search by consumers by providing useful information.

Building design and construction also have significant ramifications for the wider community, affecting the quality of the built environment, cultural heritage, and community health and safety. It is unlikely that a consumer (an individual or company) building a house or office block will fully take into account these community effects when selecting the design. Neighbours and community groups might exert some influence, but spillover effects in this market often are regarded as providing grounds for some form of regulation of private actions.

The extent to which current Architects Acts address public interest justifications for regulation of building design and construction is assessed in chapter 5. By imposing minimum qualifications and professional conduct standards on architects, the current system attempts to raise the average quality of architectural services, thus providing some protection against incompetence for relatively uninformed consumers and acting as a screening or labelling system for more informed consumers (including foreign purchasers). By raising the average quality of architects, it also is argued that the system benefits the broader community in terms of the quality of the built environment, cultural heritage, health and safety, and ecologically sustainable development.

However, current Architects Acts do not appear to promote these objectives effectively for several reasons identified in chapter 5, including:

- certification of one group of providers of building design and related services (architects) does not adequately protect consumers against practices that may result in significant harm (especially structural defects and improper or incompetent construction management which results in delays and financial loss):

  - consumers may choose to hire non-architects and, even when hired, architects may not provide or be responsible for the services that could result in harm — indeed, builders usually are ultimately responsible for building safety and architects often do not act as project managers; and
  - requirements for certification of architects do not *directly* ensure knowledge of, or competence in, *current* safe construction techniques and sound commercial practice;
- architect domination of the Architects Boards, combined with a lack of transparency and independent scrutiny of Board procedures, and inaccessible, limited and often complex procedures for consumer complaints, at the very least contribute to a perception that the Boards may serve the interests of architects rather than consumers;
- current certification of architects provides some generic information about the credentials of architects to those consumers who are aware of the registration system. However, given the highly personalised nature of a design service, and the large expenditure usually involved, most consumers are likely to engage in extensive search to find a provider whose design skills suit their particular requirements. If this is the case, it is unlikely that the current system provides additional useful information, or useful information more efficiently, than is (or would be) provided by the market;
- consumers who do not fully understand the registration requirements, provisions of the Acts and functions of the Boards, may mistakenly believe that certification provides a government-backed guarantee of high quality service, and thus reduce their own search; and
- certification of one group of providers (architects) is a very imprecise instrument for addressing identified spillovers:
  - consumers may not choose architects to design their buildings;
  - even if they do hire an architect, consumers may not accept the architect's advice; and
  - the views (often divergent) of architects about design aesthetics, the quality of the built environment and cultural heritage, may not necessarily reflect those of the wider community.

Good regulation should target the source of the problem. Yet certification of architects appears to be a very imprecise and blunt instrument both for protecting consumers and for promoting any broader community benefits. Though the Commission agrees that current statutory certification may provide limited information to some customers and some protection of those consumers who hire architects, the benefits of current Architects Acts must be assessed relative to

outcomes which would be achieved in their absence. If Architects Acts were repealed, a range of legislation and regulation (including fair trading and building laws and planning processes) would remain in place which is more directly targeted at consumer protection and spillover concerns. Moreover, removal of *statutory* certification of architects is unlikely to mean an absence of any form of certification of architects. Indeed, in the Commission's view, self-regulation is likely to promote credible private certification which imparts more information to consumers than the generic label architect (chapter 11).

The Commission accepts that statutory certification of architects may be one factor facilitating exports of architectural and education services (chapter 6). However, though some foreign purchasers and governments may place varying requirements on Australian architects, it is possible to devise mechanisms that certify architects and accredit architectural courses, as required by foreign consumers, without necessarily imposing restrictions of title on the domestic market.

9.2 Costs

The effects of key provisions of current legislation on competition and efficiency are evaluated in chapter 7.

Because restrictions on use of the title architect and its derivatives do not prevent other, uncertified, providers competing in the market, the anti-competitive effects of these restrictions are limited, though not negligible. Essentially, any anti-competitive effects caused by these restrictions on the use of certain words and phrases relate to the extent to which restrictions are at odds with common use of those words and phrases.

Because of title restrictions, some consumers may not be aware of the existence of other providers of design services apart from architects. Thus, their choice of designer under current regulations may be somewhat distorted. While building designers and others advertise the services they provide, this process itself may incur additional costs due to Architects Acts. Moreover, building designers have provided evidence that their ability to market their services is constrained significantly by their inability to describe their work as architectural.

It is very difficult to quantify the magnitude of these effects. One symptom of restrictions on competition would be relatively high architects' fees, reflecting barriers to being an architect. However, while some architects are paid high fees, this could reflect the value placed on their individual abilities by the market, or a more extensive service. Average incomes of architects do not appear to be high relative to other comparable professions (chapter 3).

On the whole, the anti-competitive costs of restrictions on the use of the title architect and derivative terms are unlikely to be large because practice is not restricted. Nonetheless, costs are positive.

Significant anti-competitive effects may arise from the interaction of the certification system and other regulations and practices. For example, in Queensland, the design of buildings over 25 metres in height is reserved for architects. And, traditionally, government buyers of design services have tended to use predominantly architects (either as in-house providers or, more commonly in recent years, as external contractors). Though this may to some extent reflect consumer preference, non-architects often are excluded from bidding for projects of a type they perform regularly for private clients. While such restrictions on competition (which benefit architects at the expense of consumers and non-architects) are not solely attributable to Architects Acts, restriction of title has facilitated them. In both cases, architects are likely to benefit from the restriction of competition, at the expense of consumers and thwarted competitors.

Restrictions on ownership of architectural practices and, to a lesser extent, restrictions on advertising and certain non-architectural activities by architects, have inhibited the efficient and innovative provision of services by some architects (via multi-disciplinary firms, for example) and reduced their ability to compete against non-architects who do not face such constraints. It also is possible that registration requirements are unnecessarily onerous, imposing additional 'entry' costs on young architects, discouraging registration. Separate and, for companies, somewhat different State and Territory registration requirements, also have generated unnecessary costs for architects (chapter 8).

The current system of regulation also incurs administrative costs. Although these costs are probably higher than they need be because of duplication of functions across States and Territories they, nonetheless, are quite low.[1] Moreover, alternative forms of certification also would incur administrative costs.

9.3 Net benefits

The Commission agrees that there may be a case for regulation in some aspects of building design and construction (especially as they relate to community health and safety and some aspects of the quality of the built environment). But the Commission also considers that, while costs imposed on the community by the

1 The costs of operating the Boards are largely met by registration fees. Nonetheless, these operating costs represent a real cost to the community because they indicate the value of resources used.

current system do not appear to be large, the overwhelming weakness of the current system is that it provides virtually no community benefits over and above those provided by other existing legislation. Architects Acts do not effectively and efficiently address shortcomings in the market for building design and related services. Consumer protection and spillovers generally are being more directly and comprehensively targeted by other existing forms of regulation, including building and fair trading laws and planning processes.

FINDING 9.1

Though community costs are limited because competition in the market for building design and related services is not hindered significantly, the community benefits of current Architects Acts, in terms of consumer protection, information provision, and community-wide effects, are negligible. The Commission, therefore, is of the view that the costs of current legislation regulating architects outweigh the benefits, and that net community benefits are negative.

This is not to say that regulation of the architectural profession in some form may not be desirable. Alternative regulatory approaches, including several modifications that might address some of the shortcomings of current regulation, are examined in chapters 10 and 11.

10 Alternatives: modifying existing legislation

As summarised in chapter 9, the Commission considers that current regulation of architects fails to provide net benefits to the Australian community. Under the terms of reference, the Commission is required to identify and assess alternatives to current regulation, including non-legislative approaches. In this and the following chapter, various approaches that might remedy some or all of the deficiencies outlined in chapter 9 are presented, along with the advantages and disadvantages of each. The options in this chapter are grouped under three broad headings — regulating practice, improving current Architects Acts and regulating architects under State Building Acts. Co-regulation and self-regulation are discussed in chapter 11.

10.1 Regulating practice

The current system of statutory certification is not an ideal instrument for protecting consumers or addressing spillover effects, at least in part because it is not comprehensive. Evidence presented in chapter 3 suggests that increasing numbers of consumers are using non-architects to perform services traditionally provided by architects.

Several participants considered that an appropriate response to this shift to other providers would be to restrict some parts or all of the practice of architecture to registered architects. The RAIA was in favour of reserving practice for appropriately-qualified practitioners, noting that many countries regulate practice:

> … many other countries either have, or are moving towards, a system of 'practice' regulation under which only individuals and groups of individuals who meet specific legislated criteria may perform the services of the profession. These systems acknowledge that the most effective means of protecting the public interest, in respect to the quality and performance of the constructed environment, requires legislation to control the practice of architecture, rather than merely limiting access to the title 'architect'. (sub. 16, p. 27)

While it is true that many countries regulate practice, a number of factors need to be considered when making comparisons, including the broader regulatory framework,

which practices are limited by regulation, and whether other regulations such as building codes, planning regulations and consumer protection laws exist. In Japan, for example, while a licence is required to practise architecture,[1] a three-tier licensing system exists under which the education and experience requirements for each class of licence vary, as does the scope of practice which may be undertaken by licence holders of different classes (JAEIC 1999). Furthermore, a range of acceptable levels of education and experience are specified. In the United States, practice regulation excludes the design of family homes — a sector of the market in which information problems arguably are likely to be greatest. In several other countries — for example, Denmark, Norway and Sweden — neither use of the title architect nor the practice of architecture is regulated (RAIA, sub. 16).

In other words, though some countries ostensibly restrict the practice of architecture, their regimes in practice may operate quite liberally by imposing a lower threshold for registration, or by allowing segments of the market to operate freely (especially those segments where enforcement would be difficult).

The case for regulating practice

A major claimed advantage of regulation of practice (or professional licensing) compared to the current system of certification is its universal coverage. In essence, the consumer's choice would be restricted to those providers deemed to be competent. This would, it is argued, enhance consumer protection and, of particular importance, promote the quality of the built environment.

However, as discussed in box 4.2, licensing is a strong form of regulation which typically restricts competition to a far greater extent than a system of statutory certification. Hence it should be used only in those circumstances where the potential for harm (in the absence of regulation) is substantial, and where licensing can effectively and efficiently mitigate that risk. In the case of architects and architecture, however, these criteria are not met because:

- the size of potential benefits of licensing of architects is directly related to the harm currently being caused by consumers using non-architect providers of building design and related services. As discussed in chapter 5, most consumers appear to be making informed decisions as to whether they use services of architects or non-architects. In those aspects of the service where consumer protection may be warranted, minimum building and planning requirements

1 A licence is not required for wooden buildings no higher than two storeys which are no more than 13 metres in height, with eaves no more than nine metres in height, and with total floor space not exceeding 100 square metres.

already are addressed, arguably more appropriately, by imposing standards on all providers;

- as with certification, there may be only an indirect link between requirements for obtaining a licence and the source of harm needing to be addressed;
- it is unlikely that restrictions on practice would generate significant savings in consumers' search costs because design is not a homogeneous service. Consumers would still need to search for an architect who suits their particular tastes and requirements;
- in particular, it is not obvious that restricting building design to architects would efficiently and directly address spillovers (including the quality of the built environment). Not everyone would agree with architects' views about good design, for example, and even if consumers were compelled to use architects, they could not be compelled to accept the architect's designs or ideas (or to exceed their budget);
- restrictions on practice would be likely to lead to higher fees for architects (unless entry standards were altered to allow all potential building designers to register), at the expense of consumers and excluded non-architect providers; and
- it would be difficult to determine which aspects of the architectural service should be reserved for architects — architects provide a wide range of services also performed by many other specialist providers (including, for example, project managers). If all activities undertaken by architects were reserved for architects, the impact on competition and innovation in the construction industry could be substantial.

FINDING 10.1

Introduction of reservation of the practice of architecture and building design to registered architects would have the potential to increase consumer costs significantly and to restrict substantially competition in the market. In particular, reservation of practice would not address concerns about the quality of the built environment efficiently or effectively.

10.2 Improving current Architects Acts

Major shortcomings of the current system of certification are that it fails to address public interest concerns efficiently (chapter 5), it imposes restrictions on competition in the market for building design and related services (between architects and non-architects as well as between architects) (chapter 7), and creates duplication and inconsistency between jurisdictions (chapter 8).

Most participants in this inquiry recognised that the current Architects Acts have many shortcomings. The Architects Accreditation Council of Australia (AACA) and Architects Boards have attempted to address these by developing and endorsing the National Legislative Guidelines, although they have not yet been implemented by any jurisdiction (box 8.3). The Guidelines are summarised in box 10.1. These and other reforms to existing architects legislation, which aim to address some of the shortcomings of the current system, are discussed in this section. Feasible options are grouped under three headings — improving consumer protection and information, reducing duplication and promoting consistency, and promoting competition. All include retention of legislative protection of title in some form.

Box 10.1 **AACA National Legislative Guidelines: summary**

Registration as an architect

- admission requirements to include prescribed academic qualifications and practical experience and passing a prescribed examination
- replacement of fitness/character requirements with conduct/competence requirements
- provision for statutory recognition of mutual recognition agreements
- provision for right of appeal for applicants refused registration on grounds other than failure to comply with qualification and training requirements
- limiting the list of situations in which an architect is deemed unfit to continue on the register, and increased reliance on compliance with the standard of conduct

Regulation of architectural practices

- removal of ownership restrictions on architectural practices and replacement with the requirement that architectural work undertaken by a business is under the direct control and supervision of an architect
- introduction of an annually renewable practising certificate (requiring professional indemnity insurance and continuing professional development) for registered architects who wish to offer or provide architectural services

The conduct of architects

- standard of professional conduct and penalties for violation to be included in regulations
- extension of concept of unacceptable or improper professional conduct to include serious incompetence, recklessness and negligence

(Continued next page)

Box 10.1 **(Continued)**

- provision for registration authority to hear a complaint or initiate its own investigation of professional misconduct by an architect for failure to meet required standards of conduct
- provision for increased range of penalties to be available to registration authority

Disciplinary proceedings

- extension of statutory means available to registration authority to investigate and hear complaints to include mediation or conciliation
- provision for registration authority to appoint a disciplinary tribunal to hear complaints. Tribunal to have a minimum of three members, a majority of whom are to be architects and at least one of whom is to be a consumer representative
- sanctions to be determined and imposed by registration authority
- architects penalised for misconduct to have the right of appeal

Prohibited practices by non-architects

- non-registered persons or practices to be prohibited from using the title architect or its derivatives, with some exemptions

Continuing professional development

- as part of a prescribed code of conduct, architects required to formulate and implement a systematic and structured program of continuing professional development to maintain registration

Administrative provisions

- registration authority to have a minimum of four members with a majority of architects, including a minimum of one member appointed by the Minister to represent consumer interests
- a number of other administrative provisions relating to examinations, definition and publication of the register, course accreditation and fees

Source: AACA (sub. 55, appendix 2).

Improving consumer protection

A major rationale for regulation of architects through legislation is protection of consumers by upholding standards of conduct of architects. Nevertheless, the dominance of Architects Boards' membership by architects, the Boards' limited accountability, and inadequate consumer knowledge of and accessibility to complaints mechanisms contribute to a perception that, in practice, Boards may serve the interests of architects rather than consumers and the community

(chapter 5). This section explores possible changes that might enhance the Boards' consumer protection role.

Clarifying objectives of Architects Acts

As outlined in chapter 2, the objectives contained in the various Architects Acts do not explicitly mention consumer protection or broader community objectives, focussing rather on the process of registration and regulation of the professional conduct of architects. Amendment of Architects Acts objectives to clarify that the Boards must represent the public interest would be a logical first step to enhance the Boards' consumer protection role.

To reflect the consumer protection focus of Architects Acts, consideration could also be given to transferring responsibility for Architects Acts in jurisdictions from works departments to consumer affairs departments.

FINDING 10.2

Amendment of objectives of the current Architects Acts (under review), to clarify that the Boards must represent the public interest, would be desirable. The transfer of responsibility for Architects Acts to consumer affairs departments would enhance the Acts' consumer protection focus.

Board and committee composition

In all jurisdictions, Architects Boards and their committees comprise a majority of architects, with limited consumer representation (chapter 2). While some participants argue that consumer representation on Boards is undesirable (for example, John Chappel (sub. DR403), an architect), and there is some debate about the appropriate balance between consumer representatives and architects (few architect participants supported a majority of non-architects on Boards), many participants appear to support consumer representation on Boards. For example, the AACA National Legislative Guidelines, while proposing that the majority of Board members should be architects, also recommend that at least one member should represent consumer interests:

> … the registration authority [should] have a minimum of four members composed of a majority of architects with representation, where possible, as follows:
>
> - Architect appointed by the Minister
> - Minimum of one member appointed by the Minister to represent consumer interests
> - A minimum of one academic architect appointed by the School/s, in rotation where appropriate

- Architect nominee of President of RAIA State/Territory Chapter
- One to five architects elected by the architects registered in the State/Territory. (sub. 55, appendix 2, p. 14)

The AACA subsequently suggested that it may be possible to increase the proportion of lay Board members (trans., p. 569).

If the role of Boards is protection of the public interest, increased consumer representation (including major consumers) on the Boards would be desirable. As Meredith Carter stated in a review of registration of health practitioners:

> The addition of community representatives to the membership of Boards is not simply a measure to balance the professional domination of Boards but also a recognition that broader membership of Boards can facilitate their development as more accessible and credible complaints handling mechanisms, fairer disciplinary bodies and impartial registration authorities. (Carter 1987, quoted in RRU 1990, p. 37)

Increased membership from other disciplines, which would bring different perspectives and skills to the Boards, would also be desirable — for example, members with expertise in finance or law or members from related occupations such as engineers or building designers. Board representatives from large consumers of building design and related services, such as the large firms dominating the building industry, may also be desirable to give these consumers a voice in the Boards' certification and accreditation processes. William Curnow, an architect, supported the concept of the Board 'having a diverse make-up representing a full spectrum of stakeholders in the construction business' (sub. DR389, p. 4).

In the Commission's view, it is desirable that a majority of Board members *not* be members of the profession. In a review of architects regulation in Victoria, the Regulation Review Unit (RRU) made such a recommendation,[2] noting that a majority of architects on the Boards and their committees could give members of the profession the opportunity to control the regulatory process, and deny the public the opportunity to discipline architects by public standards other than those of architects (RRU 1989, 1990). On the other hand, adequate architect representation on the Boards may be necessary to provide technical expertise. However, lay members could seek external expert advice when dealing with highly technical issues. As the ACT Government suggested:

> Where regulation of a profession is justified, control of it should be separate from the profession in order to prevent 'capture', although the profession should have a recognised role advising on standards and competencies. (sub. 381, p. 3)

2 The review recommended the Architects Registration Board of Victoria comprise one engineer, three consumer representatives and three architects.

Changes made to the Architects (Registration) Acts 1931–1969 in the United Kingdom in 1997 reduced the Architects Board from an unwieldy 73 members to a small, lay-dominated Board of eight lay members and seven architects (Fisher, H., pers. comm., 17 February 2000). A number of other changes to the UK Architects Acts are summarised in box 10.2.

Box 10.2 **Selected changes to the UK Architects Acts**

A review of the Architects (Registration) Acts 1931–1969 in the United Kingdom was undertaken in 1993 (Warne 1993). While the review recommended that statutory protection of the title architect be abolished and the Architects Registration Council of the United Kingdom (ARCUK) disbanded, this recommendation was not accepted. However, amendments to architects legislation were made under the Architects Act 1997. The main changes involved renaming and revising the composition of ARCUK (to eight lay members and seven architects) and modernising the arrangements for disciplining registered architects.

The term of office of each member is now limited to three years, with no member allowed to serve more than two consecutive terms. Lay members are appointed by the Privy Council following consultation with consumer and other relevant bodies in such a way as to ensure a proper balance of consumers of architectural services and the general public. It is intended that nominees should be representative of bodies such as local authorities, other branches of the construction industry and financial institutions. Architect members are elected by a ballot of all registered architects. A quorum of the Board is nine, of whom four are to be architect members, and the Chairman of the Board is elected by Board members.

Source: Fisher, H. (pers. comm., 17 February 2000).

The Commission recognises that finding suitable lay members willing to sit on the Boards may be difficult. Consideration could be given to remunerating Board members to help attract suitable candidates.

FINDING 10.3

Majority non-architect membership of Architects Boards and their committees would enhance the Boards' consumer protection role.

Complaints and disciplinary provisions

Complaints and disciplinary provisions are intended to promote the consumer protection role of Architects Acts by encouraging 'professional' conduct by architects. Yet, as discussed in chapter 5, these procedures generally are enforced by architects against architects, and consumers appear to have little knowledge of the

system. As the Board of Architects of New South Wales, quoting a submission to the 1993 review of architects legislation in the United Kingdom, submitted:

> Concerns over the fairness and impartiality of disciplinary arrangements are more likely to arise when they are administered through a process of peer review. The inclusion of measures to enhance public accountability such as consumer representation, appeal procedures for complainants and respondent practitioners, the provision of reasons for decisions and public reporting of sanctions, will help counter such concerns. (sub. 35, p. 8)

An Australian Standard on complaints handling (AS4269) has been developed to provide a generic framework for the management of complaints. The framework aims, among other things, to recognise, promote and protect consumer rights and provide an efficient, fair and accessible mechanism for resolving consumer complaints. Essential elements of an effective complaints handling system required under the standard are set out in box 10.3. Application of these generic principles could assist to improve complaints procedures under current Architects Acts.

Measures that could improve the degree to which complaints and disciplinary procedures in Architects Acts meet principles of good regulation include:

- increasing the accessibility of complaints mechanisms. The Commission agrees with the Trade Practices Commission (TPC) (1992b) and Victorian RRU (1990) that Architects Boards could do more to inform the public of the existence of these mechanisms and assist members of the public in making a complaint. Appropriate advice would include information regarding the type of behaviour that might give rise to a complaint, how to express a complaint and identify important issues, and the procedures to follow;
- promoting principles of natural justice by separating investigative functions from disciplinary functions. This was supported by the Architects Board of South Australia, which 'fully supports the separation of the investigation and disciplinary powers of the Board to ensure that issues of equity and procedural fairness are accorded to registered individuals' (sub. 137, p. 9);
- increasing the independence and impartiality of disciplinary procedures through the conduct of disciplinary proceedings by independent bodies. As noted in chapter 2, disciplinary procedures are conducted by an independent tribunal in Queensland. While the AACA National Legislative Guidelines propose that Boards may appoint disciplinary tribunals to hear complaints, these tribunals would not necessarily be independent, and sanctions would be determined and imposed by the Boards (sub. 55). The Commission considers that, if an architect is found to have contravened the Architects Act, the penalty to be imposed could be determined by an independent disciplinary tribunal without reference to the

Board. Such a system was introduced in the United Kingdom in 1997 (Fisher, H., pers. comm., 17 February 2000);

- promoting the impartiality and independence of the disciplinary regime by appointing a majority of non-architect members to complaints and disciplinary bodies. While the AACA National Legislative Guidelines propose that disciplinary tribunals should have at least one consumer representative, they also propose that architect members of the registration authority form a majority of tribunal members (sub. 55). On the other hand, Thompson Ong and Associates (sub. DR470), an architectural practice, supported an independent disciplinary body with a non-architect majority;

Box 10.3 **Australian Standard on complaints handling**

The Standard requires that the following essential elements of effective complaints handling be met:

- a commitment to efficient and fair resolution of complaints by people in the organisation at all levels;
- a complaints handling process that is:
  - fair to both the complainant and the organisation or person against whom the complaint is made;
  - adequately resourced;
  - well publicised to consumers and staff and includes information on how to complain and the right to complain;
  - accessible to all, with information that is easy to understand and in plain English readily available on the details of making and resolving complaints;
- assistance available for complainants to assist them in the formulation and lodgement of complaints;
- complaints dealt with quickly and the complainants treated courteously;
- complaints handling should not be subject to a fee;
- the complaints handling process needs to be able to fix the problem and hence needs the capacity to determine and implement remedies;
- appropriate and systematic recording of complaints and their outcomes;
- classification and analysis of complaints for the identification and rectification of systemic and recurring problems;
- appropriate reporting on the operation of the complaints handling process against documented performance standards; and
- regular reviews to ensure that effective outcomes are efficiently delivered.

Source: Standards Australia (1998).

- increasing the transparency of disciplinary arrangements by providing reasons for outcomes of disciplinary hearings to all parties to a complaint, and publicly reporting outcomes of disciplinary proceedings. This would provide important information to consumers and help enhance public confidence in the Boards' disciplinary regimes, as well as providing information to other practitioners about acceptable behaviour. The TPC (1992b) also recommended these measures;
- making it explicit that professional conduct incorporates competent performance and that disciplinary action can be instigated if architects are incompetent or negligent in their practice. Some jurisdictions explicitly provide for this (chapter 2), and it would be desirable to extend such provisions to all jurisdictions. The AACA National Legislative Guidelines proposed 'that the concept of unacceptable or improper professional conduct be extended as necessary to include serious incompetence, recklessness and negligence as well as matters of integrity' (sub. 55, appendix 2, p. 8);
- expanding the procedures available for the resolution of complaints, and increasing the range of penalties available. For example, in less serious cases, conciliation between parties to a complaint may be a more appropriate alternative to a formal hearing. Where a formal hearing proceeds, other measures — such as requiring the architect to undertake further education within a given time period and imposing a condition or limitation on the architect's registration relating to the architect's practice — used in place of, or in combination with, existing penalties, may be more appropriate. Consideration could also be given to increasing the size of fines which can be imposed on architects who breach the provisions of Architects Acts. The AACA National Legislative Guidelines proposed that provision be made for mediation/conciliation as an alternative to formal hearings and the range of penalties available to the Boards be extended (sub. 55); and
- providing independent avenues of appeal for both consumers and architects who are dissatisfied with a Board decision. Some jurisdictions provide for this; it would be desirable to extend similar provisions to all jurisdictions. The AACA National Legislative Guidelines propose that provision be made for the right of appeal by architects penalised for professional misconduct and by applicants for registration who are refused registration on grounds other than failure to comply with qualification and training requirements (sub. 55).

Participants supported a number of these changes to complaints and disciplinary procedures — for example, At The Coal Face Pty Ltd (sub. DR478), an architectural practice, suggested disciplinary provisions need to be enhanced by being made more independent, transparent, accessible, affordable, fair and national.

Keith Neighbour (trans., p. 172), an architect, also supported more transparent and independent disciplinary procedures.

FINDING 10.4

The consumer protection role of the current Architects Acts (under review) would be improved by modifications to complaints and disciplinary provisions which include:

- *increasing the accessibility of complaints mechanisms;*
- *separating investigative and disciplinary functions;*
- *appointing independent bodies to conduct disciplinary proceedings;*
- *appointing a majority of non-architect members to complaints and disciplinary bodies;*
- *providing reasons for outcomes and publicly reporting outcomes of disciplinary proceedings;*
- *making it explicit that professional conduct includes competent performance and that disciplinary action can be instigated if an architect is incompetent or negligent;*
- *expanding procedures available for resolution of complaints and increasing the range of penalties available; and*
- *providing independent avenues of appeal.*

Compulsory professional indemnity insurance

A number of participants argued for inclusion of compulsory professional indemnity insurance (PII) in Architects Acts — for example, the RAIA, the Board of Architects of New South Wales and the Architects Registration Board of Victoria (subs DR441, DR445, DR464). In its National Legislative Guidelines, the AACA proposed that persons who wish to be registered and provide building design and related services be required to hold an annually renewable practising certificate. This, in turn, would require that they hold an appropriate level of PII and undertake continuing professional development (professional development is discussed below) (sub. 55).

Requirements for compulsory PII already exist in some jurisdictions under various other pieces of legislation. For example, in Victoria, building practitioners (including architects) are required to carry PII under State building legislation.

PII provides an avenue of redress and restitution to consumers and limits the financial risk carried by service providers. The issue here is not whether PII has merit, but whether it should be compulsory. There are arguments in support of

compulsory insurance. For example, insurance premiums apparently decreased once PII was made compulsory in Victoria under the Building Act. Mandatory requirements for insurance for registration can also help to ensure registered practitioners are competent, since those who are incompetent are unlikely to be able to obtain insurance. The main argument against compulsory PII is that it may increase the costs of architectural services.

Less costly alternatives to compulsory PII include imposing a requirement that architects offer clients a choice as to whether the architect has PII on a project, or a requirement that architects disclose to clients whether they have PII.

If PII is considered desirable, it may be more appropriate that it is promoted by the professional association, rather than enshrined in legislation. In some other professions — for example, the accounting profession — PII is a requirement for membership of some professional associations, but is not enshrined in legislation. PII is currently available to members of the RAIA through RAIA Insurance Brokers. A recent review of the surveyors' profession in the ACT recommended that government should not legislate for compulsory PII as a requirement for a surveyors' licence (ACT Government, sub. 381).

FINDING 10.5

While there are arguments in favour of compulsory professional indemnity insurance, it may raise prices to consumers. Professional indemnity insurance may be more appropriately promoted by the profession than made compulsory by legislation.

Compulsory continuing professional development

As discussed in chapter 5, a major weakness of the current certification system in addressing consumer protection concerns is that the link between initial qualifications and early experience and ongoing standards of service provision is indirect.

Some participants argued for continuing professional development (CPD) as a requirement for retaining registration. As discussed above, in its National Legislative Guidelines, the AACA proposed that CPD be a requirement for obtaining a practising certificate. CPD has the attraction that it would require regular reassessment of skills. However, Helen Fisher suggested that 'whilst valuable, CPD is not a means of maintaining general competence nor can it be monitored in any serious way' (sub. DR490, p. 3).

Jeffrey Keddie, a former registrar of the Architects Registration Board of Victoria, noted:

> One regular issue between Boards and the RAIA in recent years has been the question of 'compulsory professional development'. However desirable it may be that skills should be reviewed, renewed and upgraded, the regulation of that process has foundered on questions of
>
> (a) Who will provide the training and at what price?
>
> (b) How will training programs be accredited?
>
> (c) Who is really the beneficiary of the programs, the provider or the trainee?
>
> (d) How will 'distance' education requirements be accommodated?
>
> (e) What will follow from failure to complete the training?
>
> (f) Who will determine what level of training is required for what type of practice?
>
> These questions can be multiplied. At present, the principle is acknowledged but the mechanism not agreed. (sub. 34, pp. 10–11)

This is not to say that professional development is undesirable. However, a *compulsory* scheme may have some undesirable and unintended effects. For example, it may unnecessarily increase the costs of training for all architects, resulting in increased costs to consumers of services provided by architects relative to services provided by other practitioners. It may discriminate against smaller practices, which may be less able to afford the costs associated with CPD, such as course fees and time. Furthermore, if competition for the provision of professional development activities is limited, there may be little incentive for providers to operate efficiently and ensure that fees are not excessive. At any rate, if architects benefit from CPD by improving their skills and competitive advantage, they will undertake it voluntarily.

Importantly, any requirement for CPD should not be too prescriptive about the type of professional development that is undertaken. The AACA National Legislative Guidelines recognise that it is not desirable to prescribe the form or method of CPD given the wide range of activities in which architects are involved, and proposes that 'an architect shall be required each year to formulate and implement a systematic and structured program of CPD suited to develop the practice activities envisaged to be undertaken' (sub. 55, appendix 2, p. 14).

As is the case for PII, if CPD is considered desirable, it may be more appropriate that it is promoted by the professional association. The RAIA currently encourages members to undertake CPD. The ACT review of the surveyors' profession 'noted the desirability of continuing professional development, but did not support a role for the Government in its regulation' (ACT Government, sub. 381, p. 3).

FINDING 10.6

Continuing professional development (CPD) is desirable. However, ***compulsory*** *CPD is likely to generate undesirable effects, such as increasing the costs of architectural services. CPD is more appropriately promoted by the profession than made compulsory by legislation.*

Reducing duplication and promoting consistency

As discussed in chapter 8, though residual costs of inconsistency and duplication in the regulation of architects across jurisdictions are not large, not all these costs are addressed through mutual recognition. Two regulatory frameworks with potential to promote consistency in the regulation of architects are Commonwealth legislation administered by a national statutory body, and uniform or harmonised legislation adopted by the jurisdictions and administered by State and Territory Boards.

Introduction of Commonwealth legislation, with a single national register, would eliminate the problems of inconsistency and duplication under a jurisdiction-based system and facilitate interstate trade in architectural services, making mutual recognition redundant. A number of participants supported introduction of Commonwealth legislation (for example, the Department of Infrastructure (sub. 33), the Board of Architects of New South Wales (sub. 35) and the AACA (sub. 55)).

Some participants argued that Commonwealth legislation administered by a national body could have benefits through more effective liaison with other countries and increasing the acceptability of Australian qualifications overseas (for example, the Architects Board of South Australia (sub. 137) and the Department of Infrastructure (sub. 33)). Central administration of legislation may also increase consistency in the outcomes of complaints and disciplinary proceedings.

One factor which could prove a major impediment to adoption of Commonwealth legislation is that it would require all States and Territories to refer their powers to regulate architects to the Commonwealth (under section 51(xxvii) of the Constitution). There is considerable uncertainty about whether all jurisdictions (including the Commonwealth) would agree to adopt this approach. Moreover, a regulation impact statement must be prepared for all new Commonwealth legislation. Thus, adoption by States and Territories of a set of principles to promote consistency of regulation of architects may be a more practical approach. This would require jurisdictions to adopt either uniform or harmonised legislation with the aim of introducing a single national system of registration. This would mean

that registration in one jurisdiction would automatically permit the registrant to practise as an architect anywhere in Australia.

In the Commission's view, if restrictions on the use of title were retained, a national registration system would improve the current jurisdiction-based system (provided that the national system did not increase the level of restrictions). One feasible approach to implementing a national registration system would be a central listing or collation of jurisdiction-based registers. The AACA has suggested this 'is a sensible and contemporary move and at its last annual general meeting, resolved a commitment to a centralised collation of registers by establishing a working party to oversee its implementation' (AACA, pers. comm., 30 September 1999).

While the choice of model for implementing a new system would rest largely on the preferences of State, Territory and Commonwealth Governments, the Commission's view is that a system of harmonised State legislation (combined with a central listing) would be the more practical option. Nonetheless, it observes that though the AACA National Legislative Guidelines were endorsed by Architects Boards in all jurisdictions in 1992, no jurisdictions had adopted them as at August 2000.

FINDING 10.7

A national registration system would improve the current jurisdiction-based system. If statutory certification remains in place, a system of harmonised legislation adopted by jurisdictions and administered by State and Territory Boards (combined with a central listing) appears to be the most practical model for implementing a national system of statutory registration of architects.

Promoting competition

Modifications to the current registration system considered in this section aim to promote competition among architects, as well as between architects and non-architects. They include: removal of unnecessary registration and conduct provisions; removal of ownership restrictions; introduction of contestability into certification; removal of restrictions on the use of derivative terms; and introduction of a two-tier registration system.

Removal of unnecessary registration and conduct provisions

Current Architects Acts contain unnecessarily prescriptive lists of 'objections' and proscribed practices relating to registration and conduct. These provisions may affect the level of competition or be of limited relevance in today's market for

building design and related services. A number of participants supported removal of such provisions.

Rather than rely on lists of objections and proscribed practices, it may be more desirable to rely on a standard of conduct and competence required of architects. The AACA National Legislative Guidelines suggest that registration requirements relating to character, specific circumstances or conduct unacceptable in an applicant for registration are not entirely satisfactory. They also recognise that 'lists of proscribed practices are inherently limited and unsuited to the definition of normally acceptable performance by architects' (sub. 55, appendix 2, p. 9).

The Guidelines propose that 'instead of a list of objections being included in the act, the standard of conduct and required competence for architects be the measure by which acceptability to register and remain registered be assessed' (sub. 55, appendix 2, p. 5), and that a less prescriptive Standard of Professional Conduct required of an architect be included in regulations.

Although reliance on a standard of conduct could remove a number of redundant or anti-competitive provisions from Architects Acts, care needs to be taken that the standard itself is not unnecessarily prescriptive. For example, the AACA has proposed that the standard of conduct should include requirements that the terms and conditions of engagement be in writing and that the names of the architect principals of practices should be disclosed on practice stationery. This appears to be excessively prescriptive. Furthermore, if the standard of conduct becomes too prescriptive, consistency between jurisdictions is less likely to be achieved. The Professional Standards required of building practitioners registered under the Victorian Building Act may be a more appropriate model:

> A registered building practitioner must —
>
> (a) perform his or her work as a building practitioner in a competent manner and to a professional standard; and
>
> (b) immediately inform the client in writing if a conflict of interest arises or appears likely to arise between his or her interest as a building practitioner and that of his or her client; and
>
> (c) receive remuneration for his or her services as a building practitioner solely by the professional fee or other benefits specified in the contract of engagement or by the salary and other benefits payable by the building practitioner's employer. (Building Regulations 1994, part 15.2)

FINDING 10.8

Introduction of a general standard of professional conduct (as in the Victorian Building Act) would allow removal of a number of specific requirements and anti-competitive provisions of the current Architects Acts (under review).

Removal of ownership restrictions

Ownership restrictions limit the ability of multi-disciplinary practices to market their services as architectural, thereby impeding the provision of information to consumers. They also may inhibit competition and unnecessarily impede architectural practices from developing efficient structures and raising capital (chapter 7). Inconsistencies between jurisdictions regarding company ownership also generate unnecessary additional costs for companies and inhibit expansion of their operations interstate (chapter 8).

If restrictions on ownership were removed, and restrictions on the use of title were retained, it would be necessary to introduce provisions requiring that an architect be responsible for the architectural services provided by practices, otherwise it may be possible for non-architects to circumvent title restrictions by operating as companies. Some participants supported easing of ownership restrictions in this manner. For example, the Board of Architects of New South Wales (sub. 35) and the AACA (sub. 55) suggested that any practice should be free to offer architectural services and use the title architect as long as the architectural service offered by that practice is under the direct supervision of an architect. The AACA National Legislative Guidelines reflect this view.

FINDING 10.9

Removal of ownership restrictions, and introduction of provisions requiring that an architect be responsible for the architectural services provided by practices, would eliminate costs associated with ownership provisions of the current Architects Acts (under review).

Contestable certification

Introducing contestability — that is, competition — into the certification process has potential to enhance the public interest by allowing competent practitioners with a range of qualifications and experience to be registered as architects. Contestable certification may also provide certification bodies with an incentive to operate efficiently and ensure that fees incurred by applicants for registration are not excessive. It could also help ensure that registration requirements are not excessive. Contestability in certification could be achieved in several ways — by allowing certification by other bodies recognised by government, through opening additional channels within the current Board system, and through making current channels operate in a more transparent manner.

Certification through other bodies

This option would remove the monopoly of Architects Boards over the registration process. Other bodies, such as the RAIA or other specialist bodies, could be recognised by government as certification agencies. Such bodies could compile a list of acceptable qualifications, assess practical experience and set an examination to assess the competency of candidates. Alternatively, other bodies could play a role in particular aspects of the registration process. For example, the National Office of Overseas Skills Recognition (NOOSR) could approve other bodies to assess overseas qualifications in architecture. This would remove the monopoly of the AACA in the assessment of overseas qualifications, and reduce the possibility that a conflict of interest may arise in the process of assessment by the architect-dominated AACA.

Certification through additional channels within the current Board system

It is feasible that certification could also be made available through additional channels within the current Board system. For example, the requirements for registration could be made less 'input' or 'training' focussed, so that anyone who can demonstrate their competency can gain registration, regardless of where they achieve their qualification and experience. Currently the National Program of Assessment provides an alternative mechanism for certification based on competency. However, to be eligible for the program, applicants must have gained certain levels of education and practical experience. Thus, in effect, this program also operates on the basis of 'inputs'.

As discussed in chapter 7, limited competitive pressure on the Boards and educational institutions may have created a bias towards high registration standards. Some participants have suggested that consideration could be given to reducing registration requirements, for example, removing or reducing the requirement for practical experience and/or passing the Architectural Practice Examination (APE) for those with a prescribed qualification. In a review of architects regulation in Victoria, the RRU (1989) raised the possibility of removing the requirement for practical experience. It suggested that, while it is impossible to judge what the impact on quality of newly registered architects may be, it is unlikely that new graduates would set up practice immediately, given the costs involved and the need to gain experience. Furthermore, consumers would be unlikely to employ an architect without evidence of experience, inspecting previous work or references.

Furthermore, the Department of Foreign Affairs and Trade (sub. 146) indicated that as part of World Trade Organization 2000 services negotiations, other countries are likely to request streamlining and simplification of Australia's regulation of foreign

architects. In this regard, any anti-competitive impact of registration procedures would be reduced by an easing, for foreigners, of the requirements relating to Australian experience and the APE.

Improving certification through current channels

Current channels for certification of architects are completion of a prescribed qualification in architecture or a pass in the National Program of Assessment, together with an acceptable level of practical experience and a pass in the APE (chapter 2). A number of measures could facilitate certification through these channels, including:

- enhancing the transparency of registration examination outcomes by 'blind marking' of examinations — whereby applicants are identified only by an application number — by independent assessors to reduce scope for criticism that discrimination occurs on the basis of training etc;
- reducing the reliance on oral assessment in Board examinations, as oral assessment could disadvantage some applicants and raise concerns that discrimination may occur. Joseph D'Ambrosia (sub. DR414), an architect, supported reducing the reliance on oral assessment. If oral assessment is deemed necessary, transcripts of applicants' responses could be blind marked by independent assessors to minimise potential for discrimination;
- considering reintroduction of a system for recognition of overseas architecture qualifications under which approved overseas qualifications are routinely recognised and ensuring information provided by the AACA and NOOSR to prospective immigrants is consistent; and
- ensuring that Boards are accountable for registration decisions by establishing independent appeals mechanisms for applicants for registration should they wish to appeal against decisions. The AACA National Legislative Guidelines propose that 'where an application to register is refused by the registration authority on grounds other than failure to comply with qualification and training requirements, the applicant is to have the right of appeal to the appropriate tribunal' (sub. 55, appendix 2, p. 6). Consideration could also be given to providing independent avenues of appeal for applicants who are refused registration on the basis of qualification and training requirements, and providing for independent re-marking of examination responses of those candidates who fail Board examinations.

FINDING 10.10

Contestable certification could be achieved in several ways — by allowing certification by other bodies recognised by government, through opening additional channels within the current Board system, and by facilitating certification through current channels. This would enhance the public interest by allowing competent practitioners with a range of qualifications and experience to be registered as architects.

Removal of restrictions on use of derivative terms

Possibly more significant than title restrictions in diminishing competition are restrictions on the use of derivative terms, such as architectural services (chapter 7). To the extent non-architects provide similar services to architects, the restrictions may limit appropriate information being made available to consumers. Moreover, the Commission sees few benefits from restricting use of derivative terms. Importantly, restrictions on use of derivative terms are not necessary for certification of architects and accreditation of courses for the purposes of exports of architectural services and education.

Continued restrictions on the use of derivative terms are supported in the AACA National Legislative Guidelines:

> As the purpose of this [title] restriction is to guide those requiring an architectural service, by logical extension it must also apply to derivatives of the word architect to avoid the confusion which would otherwise exist if similar restrictions did not also apply to titles such as Architectural Consultant or Architectural Designer. (sub. 55, appendix 2, p. 12)

The Guidelines currently propose that any exemptions extended to other occupations should be restricted to the use of the words architect or architectural in connection with that occupation. Suggested exemptions include:

- naval architects and landscape architects;
- the use of the terms *architectural drafting, architectural drafter, architectural draftsman [or] draftswoman, draftsperson, architectural technician* in the case of persons who have satisfactorily completed an architectural drafting course or architectural science/technology course at a recognised school;
- the use of the term 'architectural' by suppliers/manufacturers of architectural goods in combination with certain architectural goods and materials as prescribed from time to time in the regulations under the Act;

- the use of the title ‘architect’ when it is obviously not connected with the design and construction of buildings, for example, software architect, architect of the economy and the like. (sub. 55, appendix 2, pp. 12–13, emphasis in original)

Such exemptions are desirable because they narrow the monopoly on the title architect and its derivatives to the market for building design and related services.

The AACA subsequently suggested that ‘with some discussion we could move away from our guidelines approach to derivatives and abolish them entirely’ (trans., p. 566).

The Building Designers Association of Australia (BDAA) supported the removal of restrictions on the use of derivative terms, at least for appropriately qualified building designers:

> Use of derivative terms ‘architectural services’, ‘architectural design’ and ‘architectural drafting’ should be unrestricted for building designers holding the appropriate competencies. (sub. 40, p. 10)

In New Zealand and the United Kingdom, use of the title architect is restricted but use of derivative terms has never been restricted. Helen Fisher (pers. comm., 17 February 2000) suggested that, according to the Complaints Section of the Architects Registration Board in the United Kingdom, this creates consumer confusion and frustration, and many complaints are received about people who call themselves architectural consultants and architectural designers but who are not architects.

The Commission is not in a position to say whether the number of complaints in the United Kingdom reflects the level of usage of non-architects or is disproportionately high compared with complaints concerning architects. Removing restrictions on the use of derivative terms may increase the risk that some consumers inadvertently choose a non-architect. However, as discussed in chapter 11 in relation to repeal of Architects Acts, the risk is likely to be low given that most consumers undertake extensive search.

FINDING 10.11

Removal of restrictions on the use of derivative terms would have a beneficial effect on competition in the market for building design and related services.

Two-tier registration system

As discussed in chapter 7, limiting the use of the title architect places some restrictions on the ability of those not registered as architects — including those

who have obtained a degree in architecture — to compete in the market supplying building design and related services. One way to overcome this restriction on competition is to create a two-tier registration system.

There are several possible models for a two-tier registration system. For example, the title 'architect' could be reserved for those with accredited academic qualifications, while the title 'registered architect' (or similar) could be used by those who pass additional registration requirements set by the relevant Architects Board. A two-tier system which differentiates between 'chartered architects' and (non-chartered) 'architects' operates in New South Wales. However, a non-chartered architect is entitled to use the title 'architect' only if working under the supervision of a chartered architect (chapter 2).

Andrew Begg, an architect, supported such a registration system, suggesting:

> … there is a body of opinion that graduates should be allowed to call themselves 'architects' and, after passing the Practice exam, be allowed to call themselves 'Practicing Architects' (or similar term). There is much to recommend this view. It puts graduates on the register and brings them within the disciplinary provisions of the register and distinguishes those who wish to practise as a principal. The status of an architect would be clearer to the public. (sub. DR486, p. 3)

On the other hand, Alan Hall (sub. DR384), an architect, suggested the register of non-chartered architects in New South Wales is useless in informing the public of a level of competency, and Kent Lyon (sub. DR411), also an architect, suggested a tiered registration system would confuse consumers.

As pointed out by the Architects Board of South Australia (sub. DR415), introduction of a practising certificate as proposed in the AACA National Legislative Guidelines would result in a two-tier registration system that distinguishes practising and non-practising architects. Under this system, those who are registered but not practising may use the title architect, and those who are registered and wish to provide architectural services would be required to hold an annually renewable practising certificate (sub. 55). However, such a system would not reduce the costs associated with title restrictions, since use of the title architect would still be limited to those who have met registration requirements set by Boards. It also would provide only marginally better information to consumers than is provided under the current registration system.

Another option is to give Boards control over use of a title such as 'registered architect' or 'chartered architect', leaving use of the generic title 'architect'

unrestricted.[3] A similar system operates in the surveying profession in New South Wales, where the term 'registered surveyor' is protected by legislation but the word surveyor is not (NSWDPWS 1997). This option also would effectively remove restrictions on the use of derivative terms. It would be broadly similar to the self-regulation model discussed in the following chapter, except that requirements for use of one label (for example, 'registered architect') would be backed by legislation. This two-tier model has several attractive features. It would remove anti-competitive costs associated with restrictions on the generic title architect and its derivatives, and would allow architects to choose whether or not to meet registration requirements. In other words, the statutory system would be subject to competition.

In jurisdictions which have introduced Building Acts requiring registration of building practitioners (chapter 2), a two-tier model along these lines could operate in conjunction with building legislation. That is, registration as a registered architect under Architects Acts could be recognised as meeting the requirements for registration under building legislation. However, it would be desirable to have additional avenues for registration as an architect under Building Acts to allow competent practitioners with a range of qualifications and experience to be registered (in other words, contestable certification is desirable — see above). Regulation of architects under State Building Acts is discussed in more detail in the following section.

Such a two-tier system would provide statutory certification and statutory course accreditation for export purposes.

FINDING 10.12

Introduction of a two-tier registration system which gives Architects Boards control over use of a title such as 'registered architect' or 'chartered architect', leaving use of the generic title 'architect' unrestricted, would improve the ability of those not registered as architects — including those with a degree in architecture — to compete in the market for building design and related services, while continuing to provide statutory certification and course accreditation for those architects and course providers who choose to meet registration requirements.

[3] In practice, the consumer protection provisions of the *Trade Practices Act 1974* and complementary State and Territory fair trading legislation would prohibit companies and persons from engaging in misleading or deceptive conduct or making false or misleading representations (chapter 2).

10.3 Regulating architects under State Building Acts

As discussed in chapter 2, in some States, a number of categories of building practitioners (including non-architect building design practitioners) who act as principals to the building contract are required to be registered under State building laws. An alternative approach to remedy deficiencies of current Architects Acts is to repeal Architects Acts and regulate architects under State Building Acts, along the lines of a proposal made in a National Competition Policy review of architects and building legislation in Victoria in 1999 (Freehill Hollingdale and Page 1999).

Some participants supported this approach. For example, the Building Designers Association of Victoria suggested 'there is no valid reason why architects should not be embraced by the [Victorian] Building Act. There is no reason why architects should be treated differently compared to any other building practitioner in the industry' (sub. DR474, p. 1). Similarly, the Building Practitioners Board of Victoria (BPBV) opposed continued exclusion of architects from the Victorian Building Act (sub. DR481).

The BDAA suggested:

> A series of harmonious state and territory building practitioners registration schemes would provide a useful statutory support structure for the various associations' self-regulatory codes. (sub. DR440, p. 2)

However, the BDAA did not necessarily support the regulation of architects under State building legislation, noting 'architects may choose to also be involved in such a scheme or continue their own certification' (sub. DR440, p. 2).

The Victorian Building Act appears to have several advantages over Architects Acts, including:

- it recognises that architects are one of a range of building service providers;
- it confines registration to those persons (not companies) who act as contract principals;
- it would clarify the objectives of legislation regulating architects, since State building legislation includes objectives relating to health and safety and building standards (although there is no objective relating specifically to representing the public interest);
- the BPBV comprises members of each occupation registered under the Act, not just architects. While BPBV membership does not currently include consumer representation, this is likely to change when the current term of the BPBV expires in 2001 (BPBV, sub. DR481). Freehill Hollingdale and Page (1999)

recommended that the BPBV comprise several consumer group representatives and community or non-industry representatives;

- there are likely to be synergies and efficiencies in complaint and disciplinary procedures;
- it provides for restitution through PII, although the compulsory nature of this insurance may have some costs, as discussed previously;
- ownership restrictions would be removed, since only one of the directors of a firm is required to be registered for the firm to be able to offer services under the Building Act;
- there is potential for different channels for certification. For example, as a transitional measure, a number of different organisations were able to issue certificates of competency for registration of draftspersons until the end of 1999. Requirements for registration as an engineer include a degree and three years experience *or* a current certificate of registration as an engineer on the National Professional Engineers Register. The Board also has discretion to assess the qualifications and experience of applicants without the prescribed qualifications as equivalent to these requirements; and
- restrictions on the use of derivative terms effectively would be removed.

Registration of architects under State building legislation, as in the Victorian model, would also be likely to free up use of the title architect to some extent. While registration of architects and other building design practitioners in the same category under State building laws would be preferable, even if architects were registered in a separate category (called 'architects'), those who are not contract principals but who have relevant competence and/or qualifications would be able to use the title architect. Whether other competent practitioners would be able to adopt the title would depend on the requirements for registration as an architect under the Building Act. Ideally, contestable certification would allow competent practitioners with a range of qualifications and experience to register. For example, certification bodies could include the Building Practitioners Board itself, a professional association or other private certification bodies. Moreover, it would appear feasible to restrict a title such as 'registered architect' rather than the generic title architect.

The Victorian model also has some less desirable features, including that it is still a state-based system, therefore potential for inconsistency and duplication between States exists (problems related to inconsistency and duplication of regulation are discussed in chapter 8). However, similar potential problems would exist with a model of harmonised Architects Acts. The desirability of requirements that registered practitioners hold PII and be 'of good character' are also debateable.

In Queensland, building legislation regulates the practice of architecture (chapter 2). However, as discussed in section 10.1, reservation of the practice of architecture to registered architects has the potential to increase costs for consumers significantly for little or no community benefit. The proposal that compulsory CPD be a requirement of re-certification under the Tasmanian Building Bill also may not be desirable (compulsory CPD is discussed in section 10.2).

FINDING 10.13

Repeal of the current Architects Acts (under review) and regulation of architects under State Building Acts, as proposed in a recent National Competition Policy review of Victorian architects and building legislation, has the advantages that it would regulate architects in the same manner as building designers, and focus regulation on those practitioners who directly deal with consumers. However, the model as implemented in some jurisdictions has some undesirable features, most significantly, regulation of practice in Queensland.

11 Alternatives: co-regulation and self-regulation

Two models of regulation of the architectural profession are discussed in this chapter — co-regulation and self-regulation. Under both, the profession would develop and administer its own arrangements for consumer information and quality control. The primary distinction between the two is that, under co-regulation, government would provide selected professional association(s) with legislative backing to enforce various requirements while, under self-regulation, there would be no requirement on providers to join an association and no statutory enforcement.

11.1 Co-regulation

Co-regulation combines legislative provisions with functions administered by the professional association. Governments typically administer those processes where conflicts of interest may affect decisions made by the professional association.

Co-regulation requires determination of which regulatory functions should be administered by the professional association(s) and which should be administered by government (or a statutory authority). Examples of regulatory functions include certification of members of the profession, accreditation of courses, provision of processes for dealing with complaints, provision for ongoing education of members and disciplinary arrangements.

Examples of co-regulation in other professions in Australia include:

- insurance practitioners who are licensed under legislation administered by the Superannuation Commission; the industry association administers a code of ethics and complaints resolution scheme;
- the South Australian Office of Consumer and Business Affairs, which administers licensing, registration and disciplinary processes for a number of occupations — including building work contractors, plumbers, gas fitters, electricians, land agents and conveyancers — under occupational licensing legislation; the individual associations set professional standards and operate complaints resolution processes; and

- the NSW legal profession which sets entry standards and administers disciplinary mechanisms, while a statutory authority handles complaints against lawyers. (COAG 1999; OCBA 1999)

The RAIA proposed a system of national co-regulation under which:

> The States and Territories cede to the Commonwealth their powers to register and regulate architects. The Trade Practices Act is amended to provide for The Royal Australian Institute of Architects to be the recognised authority to register and regulate architects. [and]
>
> The Commonwealth establishes an administrative tribunal or tribunals to deal with offences under the Act or under the regulations set by the regulating authority. (sub. 16, pp. 26–7)

However, a number of other participants opposed administration of legislation by a professional body. For example, the Architects Board of South Australia submitted:

> The Board does not believe the RAIA is an appropriate body to be responsible for administration of any legislation. The RAIA is responsible as a professional body for representing its members' interests and not necessarily those of the public. (sub. 137, p. 14)

It is not necessarily the case that co-regulation administered by a professional association results in conflicts of interest, because government can administer those processes where conflicts of interest are likely to occur. However, the co-regulation model proposed by the RAIA does not provide for contestability of certification (that is, the RAIA would effectively be given a monopoly over certification of architects) and gives the professional association legislative backing to set certification standards.

In practice, co-regulation as proposed by the RAIA is probably not significantly different to the current system of regulation of architects, and is likely to produce outcomes no better than and possibly inferior to current arrangements. Transferring statutory powers from Architects Boards to the professional association is not likely, of itself, to generate benefits, because it would simply transfer the monopoly certification powers of the Boards to the RAIA. Thus, anti-competitive effects of title restrictions would remain. Nor would this model necessarily provide more transparency and accountability of the certification body.

While other co-regulation models could be devised which promoted transparency, independence, accountability etc, in order to enhance consumer benefits, and which promoted competition, similar improvements could be made to the current Architects Board model.

FINDING 11.1

Co-regulation, as proposed by the Royal Australian Institute of Architects (RAIA), is likely to produce outcomes no better than and possibly inferior to current arrangements for regulation of architects, primarily because it would simply transfer current Architects Boards' monopoly powers to the RAIA. While other co-regulation models could be devised which promoted consumer benefits and competition, similar improvements could be made to the current Architects Board model.

11.2 Self-regulation

This section discusses the repeal of all Architects Acts. It is important to note that repeal of Architects Acts would not leave the profession and the services it provides unregulated. Architects and other providers of building design and related services would continue to be subject to a range of regulations designed to address consumer protection and spillovers related to the building industry, the professions and the business community in general (these regulations are discussed in more detail in chapters 2, 5 and below). Many of these regulations stipulate standards for services *provided* rather than prescribe quality standards or qualifications of service *providers*. In many cases, these general laws were not in place when Architects Acts were first introduced.

It is impossible to know *precisely* how architects and architects' associations would respond if architects legislation were repealed, since decisions relating to self-regulation would depend on the preferences of the profession (subject to the *Trade Practices Act 1974* (TPA)). Titles of several other professions — including engineers, accountants, town planners and landscape architects — are not regulated by statute in Australia (box 11.1). Experience of self-regulation in these professions provides a guide as to what might happen if the Architects Acts in Australian jurisdictions were removed.

Box 11.1 Self-regulation of other professions in Australia

Accountants

The accounting profession is largely self-regulating (although statutory regulation of accounting practices relating to insolvency, auditing and taxation exists). Conduct regulation (relating to advertising and promotion, fees, complaints and discipline) and structural regulation (including restrictions on the structure of accounting practices, entry standards, continuing education, accreditation of courses and assessment of overseas qualifications) are implemented by the major professional bodies.

A number of professional bodies exist, some of which have broad membership while others cater for specialised fields of activity, with different educational requirements for entry. There is no restriction on the title 'accountant', but membership of a professional body allows accountants to develop different titles (for example, 'certified practising accountant').

Engineers

The engineering profession is self-regulating in States and Territories other than Queensland. The Institution of Engineers, Australia administers a competency-based registration scheme for engineers (the National Professional Engineers Register — see chapter 6), a professional development program, a code of conduct and complaints and disciplinary procedures, and accredits courses.

Town and regional planners

The Royal Australian Planning Institute (RAPI), is the national professional association for town and regional planners. RAPI has a number of membership grades. Requirements for corporate membership are an accredited planning course and at least two years' practical experience. Provision is also made for applicants who do not have a recognised planning qualification. Members are required to undertake continuing professional development and abide by a code of conduct. RAPI maintains a National Register of Planning Consultants, operates complaints and disciplinary procedures, accredits planning courses and informs the public about the role of the profession. RAPI membership is considered important when seeking work overseas.

Landscape architects

Landscape architects are exempt from restrictions on use of the title architect under some, but not all, Architects Acts. Under the South Australian Architects Act, only a person who is a corporate member of the Australian Institute of Landscape Architects (AILA) is permitted to describe himself as a landscape architect. In all other respects, the profession is self-regulating through the AILA, which administers a code of conduct, a complaints mechanism, accredits courses, provides ongoing professional education, and informs the public about the role of the profession.

(Continued next page)

Box 11.1 **(Continued)**

The AILA offers a range of membership levels determined by educational qualification and experience. Requirements for associate membership include two years' practical experience, completion of an accredited qualification and passing a practice examination.

The AILA is introducing a new certification scheme for appropriately qualified and competent landscape architects. A Registered Landscape Architect (RLA) must have completed an accredited qualification, have five years' experience in a practice with at least one principal an RLA, and passed a registration examination. To remain registered, RLAs are required to undertake continuing professional development.

Sources: AILA (pers. comm., 13 December 1999); IEAust (no date (a)); RAPI (1998); TPC (1992a).

Some participants suggested that there are differences between these professions and the architectural profession, and that comparisons are not always valid — for example, the Architects Accreditation Council of Australia (AACA), Trebilcock & Associates, Basil Veal and Helen Fisher (subs DR465, DR412, DR427, DR490). In essence, it was suggested that the degree of information asymmetry, and therefore potential for harm, was not as great in the professions cited above. While the Commission is not in a position to agree or disagree with this contention, the critical question is whether self-regulation of architects would provide a credible and efficient system of certification of architects. How other professions maintain and advertise their professional standards therefore is of direct relevance.

Architects and self-regulation

As with these other professions, if additional service or quality differentiation is demanded by consumers of architectural services, architects are likely to devise their own certification system — for example, they may describe themselves as chartered, certified, registered or consulting architects. The RAIA, which the Commission estimates currently represents about 50 per cent of all practising architects, is likely to emerge as *one* private certification body.[1] Evidence from other professions suggests other bodies may emerge. For example, self-regulation in the accounting profession has seen the development of a number of professional bodies (box 11.1).

Several participants expressed concern about the credibility of self-regulation, its impacts on standards of providers, accreditation of courses, exports of architectural

1 Under self-regulation, certification bodies may be professional associations or other private bodies which offer certification of architects.

and education services, and architects' costs. They also questioned whether development of a national registration system was likely under self-regulation. These concerns are addressed below.

Credibility of self-regulation

The key difference between statutory certification and self-certification is that in the absence of legislative backing, a certification body would not have a monopoly over the generic title architect and thus would be subject to potential competition from other certification bodies. Some participants suggested that the profession would not necessarily act in the public interest (for example, the Board of Architects of New South Wales (sub. 35), the AACA (subs 55, DR465) and the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) (sub. DR435)). However, voluntary membership and scope for competition from rival bodies are likely to provide a private certification body with a strong incentive to differentiate the services of its members from those of rival bodies and to protect its reputation (and hence the reputation of its label(s)) in order to attract and retain members. Certification bodies would do this by requiring appropriate qualifications and high professional standards, enforced by disciplinary action against those who do not uphold those standards. The absence of compulsion and potential for competition are crucial differences between self-regulation and current statutory registration.

As discussed in box 11.1, most self-regulating professional associations require members to abide by a code of conduct and undertake professional development, operate complaints mechanisms, accredit courses and inform the public about the role of the profession. The RAIA already has in place various categories of membership according to qualifications and experience, a code of conduct, disciplinary provisions, and provides services such as professional development and professional indemnity insurance. By maintaining standards through these activities, the association ensures the credibility of its label(s), therefore providing accurate information about the reliability, ethics and standards of its members to consumers. In this way, a self-regulatory body can serve the public interest. Self-regulatory arrangements are also subject to the TPA.

The potential for a private certification body to establish a credible label is illustrated by the success of the certified practising accountant brand in the Australian accounting profession. The Australian Society of Certified Practising Accountants executive director, David Edwards, stated:

> Our research shows CPA is the most well known and prestigious professional brand in Australia, and it is one of our most valuable assets. We will not put it at any risk. (Thomas 2000, p. 76)

Some participants suggested self-regulation would lead to consumer confusion. For example, Hodge and Collard, an architectural practice, argued:

> There is already great confusion amongst the public as to the difference between a drafter, building designer and a registered or graduate Architect. The deregulation of the profession would only exacerbate this confusion. (sub. 30, p. 1)

Potential consumer confusion would be limited by the extent to which consumers continue to inform themselves about the quality of different architects by considering previous work, customer satisfaction, qualifications, awards and reputation, as appears currently to be the case. Furthermore, voluntary membership of certification bodies and potential for competition also would provide self-regulatory bodies with a greater incentive to promote to consumers the benefits of engaging their members than is the case under monopoly certification. Given that extensive consumer search appears to be the norm rather than the exception, and that consumers are likely to be assisted in their search by the development of different labels that provide consumers with more information than the generic title architect, the quality of consumer information is likely to improve, not diminish.

Evidence submitted to the Commission also suggests that few non-architects who are members of other professional design associations, such as the Building Designers Association of Australia (BDAA), would be likely to call themselves architects (chapter 7). These associations often have developed credible labels which are well recognised by consumers. Moreover, it is likely that, of those who adopted the title architect, many would be graduates of accredited architecture courses who currently choose to remain unregistered. As already noted, the consumer protection provisions of the TPA and State and Territory Fair Trading Acts prohibit persons and companies from engaging in misleading or deceptive conduct or making false or misleading representations.

Qualifications and standards of providers

A number of participants expressed concern that repeal of Architects Acts would lead to a reduction in the qualifications and standards of architects. For example, the Australian Institute of Building, New South Wales Chapter, suggested that self-regulation 'is likely to lead to a lowering of professional standards by encouraging a multitude of self serving para professional groups claiming expertise in architecture' (sub. DR436, p. 1).

The AACA (sub. DR465) suggested that competition between rival certification bodies would lower professional standards, because emerging bodies would reduce entry standards in order to establish quickly a viable membership. In a similar vein, APESMA (sub. DR435) suggested that certification bodies, who are reliant on their

membership for funding, face an overwhelming conflict of interest in addressing breaches of professional standards. However, evidence from other professions, such as the accounting profession, suggests this is unlikely to be the case, given that a certification body must establish and protect its reputation in order to attract and retain members. Furthermore, as noted in chapter 5, under a government-backed labelling system, the lack of potential competition means there are not the same incentives to ensure an independent, transparent and credible system.

A number of participants suggested that students would not undertake a five-year degree in architecture if use of the title architect were not restricted, and would opt instead for a qualification requiring a shorter period of study — for example, Tania J. Coward, RAIA, David Cox and Basil Veal (subs DR425, DR441, DR433, DR427). This suggests that the only benefit of the additional study involved in a five-year degree is as a pre-qualification for registration. This is unlikely to be the case. To the extent that students accrue benefits from additional study, including income-generating potential and their professional fulfilment, they will continue to pursue additional study.

National registration

While many participants in this inquiry have argued in favour of a national registration scheme for architects, some questioned whether this is likely to be achieved under self-regulation. For example, the AACA (sub. DR465) questioned whether competing certification bodies would be likely to cooperate to develop a national register. However, many examples of competing organisations cooperating in order to achieve a mutually beneficial outcome exist. For example, as DEM Design (sub. DR452), a multi-disciplinary firm, noted, the different self-regulatory bodies in the accounting profession agreed to work together to develop a single set of accounting standards. Furthermore, cooperation may not be necessary, since it is possible that a single body may establish a national register, as in the case of engineers.

If some buyers (especially overseas buyers) demand certification (chapter 6), the profession could establish a voluntary national register of persons who have met certain qualifications and standards. Requirements for this register could be determined in consultation with foreign consumers and regulators, especially for the purposes of international mutual recognition. Some form of government imprimatur could be applied if necessary for use in the export market. A model along the lines of the National Professional Engineers Register, which is operated by a Board comprising representatives of the profession, consumer bodies and government departments, may address this. Domestic buyers (including governments) could also use this register as a screening device.

Australian engineers and landscape architects have established national, voluntary, non-statutory registers. This registration, or membership of the respective professional organisation (the Institution of Engineers, Australia and Australian Institute of Landscape Architects), may be cited when competing for work in other countries.

In the Commission's view, self-regulation is more likely to achieve a national system of registration of architects than statutory certification. There is considerable uncertainty about whether all jurisdictions would agree to refer their powers to the Commonwealth in order to introduce national legislation, while even harmonised legislation may prove difficult to implement, as the AACA has found in attempting to have its National Legislative Guidelines adopted (chapter 10). This central register could operate even if not all jurisdictions repealed Architects Acts (or indeed, if current jurisdiction-based certification continued).

Accreditation of courses and exports of education services

Participants also expressed concern about the impact of self-regulation on accreditation of architecture courses and exports of education services, suggesting that the standing of Australian architecture courses would be diminished and therefore less attractive to overseas students (for example, Basil Veal, the University of Melbourne and the Association of Architecture Schools of Australasia (subs DR427, DR453, DR468)).

If Architects Acts were repealed, accreditation of architecture courses for the purposes of membership of the certification body could be undertaken by the profession. Experience in other professions — for example, the accounting and engineering professions, in which the major professional associations accredit courses around Australia — suggests the certification body could still have a significant influence on tertiary training, and that accreditation need not be conducted by a statutory body to be recognised as effective and legitimate. The RAIA is currently involved in the accreditation of architecture courses in all jurisdictions.

As noted in chapter 6, some participants claimed that the current system is important for attracting overseas students to study architecture in Australia. However, experience from other professions, such as accounting and engineering, in which accreditation of courses is undertaken by professional associations, suggests that overseas students are still likely to be attracted to architecture courses which are accredited by the profession.

Moreover, to the extent that tertiary institutions rely on fee-paying students from overseas for funding, it is likely that there will be an incentive for these institutions to maintain and advertise the quality of their courses in order to continue to attract those students. Foreign students' decisions about where to study are also likely to be influenced by other factors. As Professor John Cooper recognised, one of the reasons Australian schools of architecture attract overseas students is 'because Australia is currently a less expensive and safer place to access and study' (sub. DR394, p. 2). Accreditation of courses and exports of education services are discussed in more detail in chapter 6.

Costs

Some participants suggested that self-regulation would be a more costly system to operate than the current Architects Acts, and that this, in turn, would increase architects' costs and fees — for example, Enza Angelucci (an architect) and the Architects Registration Board of Victoria (subs DR450, DR464). Some architect participants suggested small practices would have difficulty promoting themselves (Merryn van Bremen and Col Bandy (sub. DR419; trans., p. 501)). However, it is unlikely that repeal of architects legislation would generate significant additional financial outlays to consumers or architects.

It is possible that professional association membership fees may increase in line with an expansion in the scope of their activities, as suggested by the Board of Architects of New South Wales:

> Where regulation is undertaken by a professional association, either with or without statutory backing, substantial additional costs may also be incurred by architects who must pay high annual membership fees (currently of the order of $500, as against $100 for registration in NSW), to support the 'learned society' activities of the association, whether or not they have relevance to the individual architect. (sub. 35, p. 3)

While the registration fees set by the Boards may be lower than membership fees of other certification bodies which might emerge under self-regulation, these other bodies would be likely to offer a higher level of service to members. Voluntary membership and scope for competition would provide a significant incentive for these bodies to ensure they meet members' needs and keep membership costs to a minimum. As membership is voluntary, fees could not exceed the perceived value of benefits of membership. Removal of current registration fees would at least partly offset increased membership fees. While there may be some other additional expenditure for individual architectural practices, such as increased advertising of their services, architects would only incur these outlays if they generated net benefits.

Some participants suggested that restrictions on the use of different labels under self-regulation would restrict competition, in a similar way to restrictions on the title architect under current Architects Acts. This is not the case, however. Under self-regulation, no certification body would have a monopoly over use of the title architect, and there would be scope for competition among certifying bodies (with somewhat differentiated labels), coupled with the freer use of the generic title architect.

Other regulation

As noted above, repeal of Architects Acts would not leave architects and the services they provide unregulated. Various building, town planning, environment, health and safety, and fair trading regulations would continue to (or could) impose minimum standards on architects, just as they currently do on building designers and other practitioners.

Architects (and other building design practitioners) are subject to general consumer protection legislation, such as tort and contract law, State and Territory fair trading legislation and the TPA (although architects are exempt from section 74(2) of the TPA — see below). As discussed in chapter 5, Architects Acts appear to provide negligible additional consumer protection and community benefits compared with general building and planning laws, fair trading laws etc. In most jurisdictions, these general laws have subsumed any role that Architects Acts may once have played.

As noted in chapter 2, architects are exempt from section 74(2) of the TPA, which requires services and materials supplied to be reasonably fit for a purpose made known by the consumer. The Commission sought participants' views on the desirability of applying section 74(2) of the TPA to architects. The BDAA (sub. DR440) and Queensland Department of Public Works (sub. DR484) supported removal of the exemption of architects from this provision. The RAIA, on the other hand, suggested that 'fitness for purpose' concepts are not appropriate to apply to design professionals (sub. DR441).

Given that architects offer a range of services, and that all other providers of building design and related services are subject to section 74(2) (including when doing the same work as architects), the exemption of architects from this provision seems incongruous. The Trade Practices Commission (TPC 1992b) expressed the view that the continued exemption of architects from the reach of section 74(2) is not justified.

In some jurisdictions, repeal of Architects Acts may mean that architects are registered under general Building Acts which register most building practitioners. This model is discussed in chapter 10.

FINDING 11.2

Self-regulation of the architectural profession has the advantage that the costs associated with restrictions on title and derivatives would be eliminated, since there would be no compulsion on architects to be members of any certification body in order to use the title architect. Potential for competition and voluntary membership would provide a certification body with a strong incentive to uphold high professional standards, thus ensuring the credibility of its label(s) and providing consumers with reliable information about the quality of its members. In this way, the certification body would serve the consumer interest. Various building, town planning, environment, health and safety, and fair trading regulations would continue to (or could) regulate architects and their work, just as they currently regulate building designers and other practitioners.

FINDING 11.3

Non-architect building design practitioners are not exempt from section 74(2) of the Trade Practices Act 1974. There appears to be no reason to continue to exempt architects from this provision.

12 Appropriate regulation: the Commission's assessment

The Commission's assessment of alternative models and its preferred approach to regulation of the architectural profession are outlined in this chapter. Possible transitional issues are also discussed.

12.1 The Commission's task

As outlined in chapter 1, the terms of reference for this inquiry ask the Commission to report on appropriate arrangements for regulation, if any, of the architectural profession in Australia, taking into account the following 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.

12.2 The Commission's assessment

As summarised in chapter 9, in the Commission's view, current architects legislation fails to deliver net benefits to the community principally because certification of architects appears to be an imprecise and blunt instrument both for protecting consumers and for promoting any broader community benefits. Major reasons for this failure to promote public interest objectives are that certification of architects:

- relates to only one group of providers who may or may not be responsible for those building design and related services which could generate significant harm/benefits to consumers and the community;
- does not directly ensure quality standards in those practices where there is a potential for significant harm for consumers and the community;

- appears to be poorly understood and poorly utilized by the (less informed) consumers it is intended to assist; and
- is subject to negligible external, independent scrutiny and influence which may weaken mechanisms for enforcing professional standards and encouraging consumer confidence.

This assessment of current Architects Acts does not imply that some form of professional certification may not be appropriate. The point is simply that current regulation of architects appears to do very little to ensure better outcomes for consumers and the community than would be achieved, in the absence of Architects Acts, by the profession itself and a range of other more comprehensive and directly targeted regulations, including existing building, planning and fair trading laws and codes.

The strongest argument for statutory certification of architects appears to be demand for certification of architects and accreditation of courses by some overseas governments and purchasers of Australian architectural and education services. However, demand for certification of architects and accreditation of courses by overseas consumers, students and governments does not require that title and related restrictions be imposed in the Australian market.[1] Nor should it necessarily require *statutory* certification of Australian architects. It would be feasible to devise non-statutory, targeted mechanisms that certify that exports, exporters and university courses have met standards acceptable to overseas customers. As discussed below, however, it is likely that there would be some transitional costs incurred in changing to a non-statutory system.

While benefits appear to be negligible, Architects Acts also impose costs on members of the community, including architects and building designers, because:

- competent alternative providers who are precluded from registration or who are discouraged from registering because of practice requirements (that is, persons with accredited architectural qualifications) are not permitted to market their services in the most effective and accurate way to consumers;
- architectural and multi-disciplinary companies and partnerships must fulfil requirements (in most jurisdictions) for majority architect ownership, or not label their services as architectural. Majority ownership by architects may not allow the most efficient organisational structures and impede the ability of these companies to raise capital. The alternative (not using the title architect) diminishes the quality of information to consumers; and

1 Certification for export purposes does not imply inferior standards of service for domestic students and clients as suggested by some participants. Both domestic and overseas consumers could choose between certified and uncertified practitioners.

- each State and Territory has separate and, for companies, somewhat different, registration requirements.

Protection of title, coupled with other regulations in Queensland and buying practices of most levels of government, also appears to have created *de facto* reservation of (some) practice for architects. Reliance on protection of title to maintain market share may also have reduced the incentive for innovation by architects.

Alternatives

Under the terms of reference, the Commission is required to identify and assess alternatives to current regulation, including non-legislative approaches. Alternatives considered in chapters 10 and 11 include regulation of practice, co-regulation, the Architects Accreditation Council of Australia (AACA) National Legislative Guidelines and other possible improvements to Architects Acts, incorporation of architects in general building practitioners registration regimes, and self-regulation.

Reservation of practice

The Commission sees no public interest justification for excluding non-architects from any sector of the market for building design and related services. In particular, reservation of practice is a flawed instrument for addressing concerns about the quality of the built environment. On the other hand, costs could be significant — consumers' choice of building designer would be restricted unnecessarily and architects' fees might be expected to rise.

Co-regulation

The RAIA's preferred regulatory approach, where the RAIA in effect is given a legislated monopoly over certification of architects, in the Commission's view, is likely to produce outcomes no better than, and probably inferior to, current arrangements. This is because, as with Architects Boards, the accrediting and certifying body would be given a legislated monopoly. While other co-regulation models could be devised which promoted transparency, accountability etc, designed to enhance consumer benefits, and which promoted competition, similar improvements could be made to the current model of Architects Boards. In other words, the Commission sees little intrinsic merit in transferring the statutory power for certification of all architects to a professional association.

AACA National Legislative Guidelines and other improvements to Architects Acts

The AACA National Legislative Guidelines, agreed to by all Architects Boards in 1992, propose some improvements to current Architects Acts aimed at enhancing their consumer focus. These changes include:

- requiring one Board member to represent consumers and clarifying grounds for complaint;
- removing minimum ownership requirements and supplanting restrictions;
- developing a national registration system; and
- confining restrictions on use of title and derivatives to those involved in the building sector.

In the Commission's view, these and several other of the AACA's proposed changes (box 10.1) would improve current regulation. (The Commission draws attention to its concerns regarding the proposed introduction of *compulsory* professional development (section 10.2).) However, the Guidelines do not go far enough to address shortcomings in current legislation. Other changes which the Commission considers would increase benefits and reduce costs of Architects Acts (summarised in findings 10.2–10.4 and 10.7–10.12) include:

- majority lay (including consumer) representation on Boards; provision of more information to the public about complaints procedures; independent appeals and disciplinary procedures; and public reporting of complaints outcomes;
- more transparent registration procedures (for example, by providing for the 'blind' assessment of (transcribed) oral and written examinations);
- scope for contestability of certification (by allowing other bodies to compete with the Boards as accreditation agencies or by opening up new channels for registration within the current structure);
- removal of restrictions on the use of derivatives of the word architect by non-architects, thus allowing them to label their services as architectural; and/or
- introduction of a two-tier certification system that narrows title restrictions so that they refer to 'registered architects' (or similar), thus freeing up use of the title architect and derivatives.

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.

Freeing up use of the title architect (subject to the *Trade Practices Act 1974* (TPA) and complementary State and Territory fair trading provisions which prohibit misleading or deceptive conduct) would not, in the Commission's view, lead to consumer confusion. Indeed, less-restricted use of the generic title would more directly accord with everyday use and consumer expectations. A two-tier system would continue to provide statutory certification for those architects who meet requirements set by the Boards and accreditation of courses, for use by overseas and domestic consumers and students as a screening device.

Architects as building practitioners

Victoria and Queensland have in place comprehensive building practitioners legislation (incorporating elements of a Model Building Act agreed to in the early 1990s) which requires all practitioners who act as contract principals to be registered and insured.[2] Tasmania has introduced legislation similar to Victoria's but, as at August 2000, it has not been passed. The Commission has some concerns about the operation of this legislation in some jurisdictions (especially the *Queensland Building Services Authority Act 1991* which restricts the practice of architecture and building design).

Until now, architects have been regulated separately by Architects Acts which have operated outside this broader legislative framework,[3] but a review of the Victorian Architects Act has recommended that architects be incorporated within building legislation. In the Commission's view, if regulation of architects were to continue, this proposal has some attractive features. It would involve continued government registration and course accreditation and some restriction of the title architect in certain contexts, but it would remove many of the costs of current Architects Acts (for example, use of derivatives would be freed up) and remove architects' domination of the certification process. It also explicitly recognises that architects are a part of the building industry.

2 The Northern Territory also has adopted some elements of the Model Building Act but does not require practitioners to be registered.

3 As discussed in chapter 2, however, Building Acts recognise the role played by Architects Boards.

In the Commission's view, in those States and Territories which have implemented, or propose to implement, registration of all building practitioners who act as contract principals, including building designers and architects, the following principles should be adopted:

- architects (and building designers) should be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);
- only principals (persons, not companies) to contracts should be required to register;
- the practice of architecture and building design should *not* be restricted;
- use of a title such as 'registered architect' be reserved for those registered but there should be no restrictions on use of the generic title 'architect' and its derivatives;
- there should be provision for accessible, transparent and independently administered consumer complaints mechanisms, and transparent and independent disciplinary procedures; and
- there should be scope for contestable certification of architects (that is, that the Boards accept for registration as architects persons with a variety of qualifications and experience provided they are competent). Criteria could be determined in consultation with the RAIA and other bodies as appropriate.

Application of these principles to regulation of architects would limit anti-competitive effects and promote consumer protection objectives. As with the two-tier system discussed above, statutory certification (and course accreditation) would continue, albeit with a narrower focus.

Self-regulation

Self-regulation would involve the repeal of Architects Acts but, importantly, this would not leave the profession and the services it provides unregulated. Architects and other providers of building design services are subject to a range of regulations designed to address consumer protection and spillovers related to the building industry, and the business community in general. In many cases, these general laws were not in place when Architects Acts were first introduced.

In addition, the profession would be likely to develop its own certification system to signal quality and standards to consumers. While it is impossible to know precisely how architects and architects' associations would respond if architects legislation were repealed, several other professions in Australia are not protected by legislation, and provide a guide as to what could happen.

In the architectural profession, the RAIA, which currently represents about 50 per cent of all practising architects, is likely to emerge as *one* private certification body. (The RAIA already has in place various categories of membership, a code of conduct, disciplinary provisions, and provides services such as professional development and professional indemnity insurance.)

It might be considered that self-regulation suffers from the same lack of independent scrutiny as current Boards. However, the crucial difference is that architects' associations or certification bodies would not have a legislated monopoly over registration of architects. Voluntary membership, combined with scope for competition from rival professional bodies or independent certification agencies, would give a self-regulatory body a strong incentive to protect the reputation of its membership by encouraging appropriate qualifications and high professional standards and taking disciplinary action against members who do not uphold those standards. If it did not do this, membership would cease to have value. By ensuring the credibility of its label(s), and therefore providing reliable information about the quality of its members to consumers, the self-regulatory body can promote the community interest.

National register of architects

Most participants to this inquiry have argued in favour of a national registration scheme for architects. In the Commission's view, self-regulation is more likely to achieve a system of national registration than statutory certification. National legislation is unlikely (given that the States are unlikely to refer powers to the Commonwealth), while even harmonised legislation may prove difficult to implement given the need to coordinate eight jurisdictions.

To achieve a national registration system, the profession could establish a voluntary national register of persons who have met certain qualifications or standards. One model would be the voluntary register established by engineers. Foreign and domestic buyers (including governments) could also use this list as a screening device as could those State and Territory Governments that require registration of all building design practitioners. Tertiary courses could be accredited by industry associations as occurs in several other professions which successfully attract overseas students.

In the Commission's view, self-regulation would eliminate the anti-competitive costs of current title restrictions, while competitive pressures are likely to promote credible private accreditation and certification which promotes appropriate qualifications and standards and imparts more useful information to consumers than the current certification system.

It is unlikely that repeal of architects legislation would require significant additional financial outlays by architects. It is possible that professional association membership fees would increase in line with an expansion in the scope of their activities. But as membership is voluntary, fees could not exceed the benefits of membership. Removal of current registration fees would at least partly offset increased membership fees. While there may be some other additional expenditure for individual architectural practices, such as increased advertising of their services, architects will only incur these outlays if they bring net benefits.

The Commission's preferred approach

Several amendments briefly outlined above, and discussed in detail in chapter 10, could improve current Architects Acts by reducing impediments to competition and promoting transparency and accountability of Architects Boards. In particular, introduction of a two-tier system which freed up use of the generic title 'architect' (and its derivatives), and applied statutory certification only to a title such as 'registered architect' would promote competition and, in the Commission's view, enhance consumer information. In effect, the statutory system itself would be subject to competition.

Nonetheless, the Commission questions the need for any *statutory* certification of architects. This is because statutory certification:

- provides negligible additional consumer protection and community benefits compared with general building and planning laws, fair trading laws etc. In most jurisdictions, these general laws have subsumed any role that Architects Acts may once have played in promoting these objectives; and
- provides consumers with little information over and above that which is, or could be, efficiently and credibly provided by a self-regulating profession.

In other words, the claimed benefits of statutory certification, including facilitation of exports, generally could be achieved more effectively by non-statutory certification by the profession itself, backed up by broader consumer protection laws.

Under the terms of reference for this inquiry, in assessing regulation of architects, the Commission is required to assess whether the benefits to the community of the regulation outweigh the costs, and whether the objectives of the regulation cannot be achieved more efficiently by other (including non-legislative) means. Statutory certification of architects does not meet this test. The Commission's preferred option for regulation of the architectural profession is repeal of Architects Acts, and

their replacement, as the profession sees fit, by a system of voluntary self-regulation (subject, of course, to the TPA).

The Commission considers that repeal of Architects Acts would not create significant hardship for architects or consumers. Some participants assert that consumers would be confused by other practitioners calling themselves architects and providers of architectural services.

Most consumers of architectural services do not appear to rely on generic labelling provided by current certification, and undertake extensive search to find an architect (or non-architect) who suits their particular tastes and requirements. However, there may be some consumers who assume that an architect has completed current registration requirements and who are happy to hire any architect on this basis. Their expectations may not be met if architects legislation were repealed. However, any confusion could be reduced by allowing a notification period of, say, two years prior to the legislation being repealed.

Furthermore, many non-architects are members of professional design associations and are unlikely to use the title architect. It is more likely that, of those who adopted the title, many would be graduates of accredited architecture courses who have remained unregistered. In addition, those who use the title would be subject to the general consumer protection ('truth in labelling') provisions of the TPA and complementary State and Territory legislation. Many non-architects, however, would appear more likely to describe their work as architectural. The Commission considers that this freer use of the language would assist the information process, not detract from it.

The Commission can see no reason why a credible non-statutory system of certification and course accreditation cannot be developed that will meet the needs of overseas consumers and students. However, it is acknowledged that some transitional difficulties may arise especially with respect to exports of architectural education. This may require the profession and universities to consult with foreign governments and develop alternative export certification and course accreditation mechanisms.

Though this transitional process is likely to incur short-term costs, the Commission does not regard that these costs would outweigh the benefits of change. Other professions export successfully and negotiate mutual recognition agreements on the basis of non-statutory certification and course accreditation. In particular, the Commission does not consider that Australia should be required to implement regulation in its domestic economy in order to meet the approval of governments and architects overseas, as a prerequisite for exporting. If such conditions are being

imposed, the Australian Government would need to take action in the appropriate international fora to reduce such barriers to trade.

Therefore, on balance, the Commission considers that self-regulation would generate net benefits for the community, including many architects. Self-regulation would eliminate the costs of title restrictions, and competitive pressures are likely to promote credible professional certification of architects. Self-regulation also is more likely to promote a national approach to certification of architects than a statutory system which will require either the States to refer their powers to the Commonwealth or harmonisation of laws in eight jurisdictions.

Whilst the benefits of self-regulation would be maximised if all jurisdictions were to repeal Architects Acts, if only some repealed Architects Acts, this would not impose additional regulatory costs on architects. Indeed, while those who wished to work as architects in jurisdictions which continued to register architects would need to complete registration requirements for that jurisdiction, fewer architects overall would need to complete statutory registration requirements.

The Commission recognises that several States and Territories currently register building practitioners (including building designers) who act as contract principals. If Architects Acts were repealed, it is possible that some jurisdictions would regulate architects under this broader legislation. Though not its preferred option, the Commission has spelled out guiding principles for incorporation of architects within this regulatory framework.

RECOMMENDATION 12.1

State and Territory Architects Acts (under review) should be repealed after an appropriate (two-year) notification period to allow the profession to develop a national, non-statutory certification and course accreditation system which meets requirements of Australian and overseas clients.

In those States and Territories which require all building practitioners who act as principals (including all building design practitioners) to be registered, the following principles should be adopted with respect to architects:

- ***that architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);***
- ***that there be no restrictions on the practice of building design and architecture;***
- ***that use of a title such as 'registered architect' be restricted to those registered but that there be no restrictions on use of the generic title 'architect' and its derivatives;***

- ***that only principals (persons, not companies) to contracts be required to be registered;***
- ***that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures; and***
- ***that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration).***

APPENDIXES

A Public consultation

A.1 List of submissions

Participant	*Submission No.*
A.M. Fitzgerald & Associates	DR423
ACOTREL Risk Management Pty Ltd	1
ACT Government	381
Amadeus Group of Companies	DR399
Angelucci, Enza	DR450
Anson, Robert	285
Architects Accreditation Council of Australia Inc	55, DR465
Architects Board of South Australia	137, DR415
Architects Board of the Australian Capital Territory	144, DR446
Architects Board of Western Australia	60, DR406
Architects Education and Registration Board	8, DR390, DR482
Architects Registration Board of Victoria	72, DR464
Ardagh, Thomas	371
Aris, Paul	364
Armstrong, Colin	43
Armstrong, Mark	255
Arndt, Christopher	232
Arnold, Bruce	266
Arthur, Jennifer	121
Ashbil, Abraham	193
Association of Architecture Schools of Australasia	DR468
Association of Consulting Architects – Australia	DR475
Association of Consulting Architects – WA	75
Association of Professional Engineers, Scientists & Managers, Australia	68, DR435
At the Coal Face Pty Ltd	DR478
Australian Council of Building Design Professions Ltd	DR457
Australian Council of Professions	DR472
Australian Institute of Building, New South Wales Chapter	135, DR436
Azer, Fayek	DR400
Babich, Paula	335
Bandy, Col	DR473
Banham, Gary	94
Barker, Geoff	373
Barrow, Don	166
Basham, Raymond	46

Watson, Ian	213
Way, Darryl	317
Webb, Martyn	DR471
West, Lourens	229
White, Bret	251
Whitley, Graham	370
Whyte, Alec J	177
Wilkinson, Brian	189
Williams, Bruce	259
Williams, Chris	237
Winning, George	63
With, David	56
Wood, Dean	164
Woodland, Steve	369
Wright, Timothy	352
Wyeth, Elwyn	DR437
Young, Matthew	206
Young, Richard	197
Zambotti, Luke	188
Zappavigna, Luisa	263
Zehrung, Eric	77
Zhao, Dongmin	200
Zoeb, Nafisa	320
Zuideveld, Freerk	207
Zundel, Guido	DR439
Zuvela, Max	305

A.2 List of visits

National

Architects Accreditation Council of Australia
Association of Consulting Architects
Australian Competition and Consumer Commission
Australian Council of Building Design Professionals
Australian Council of Professions
Australian Institute of Landscape Architects
Australian Local Government Association
Building Designers Association of Australia
Design Institute of Australia
Master Builders Australia
National Competition Council

National Engineering Registration Board
Property Council of Australia
Royal Australian Institute of Architects
Royal Australian Planning Institute

New South Wales

Board of Architects of New South Wales
Department of Public Works and Services

Victoria

Architects Registration Board of Victoria
Australian Institute of Landscape Architects, Victoria
AV Jennings Limited – Head Office
Building Designers Association of Victoria
Denton Corker Marshall
Department of Infrastructure
Facilities Managers Association, Victoria
Henley Properties Group
Norman Day and Associates
RMIT
Robert Peck von Hartel Trethowan Architects
University of Melbourne
Woods Bagot

Queensland

Board of Architects of Queensland
Building Designers Association of Queensland
Building Services Authority
Codd Stenders Architects
Curnow, William
Department of Public Works

South Australia

Architects Board of South Australia
Royal Australian Institute of Architects – SA Chapter

Western Australia

Architects Board of Western Australia
Department of Contract and Management Services
Royal Australian Institute of Architects – WA Chapter

Tasmania

Board of Architects of Tasmania
Department of Infrastructure, Energy and Resources
Forward Viney and Partners
University of Tasmania

Northern Territory

Northern Territory Architects Board

Australian Capital Territory

Architects Board of the Australian Capital Territory
Department of Urban Services
Department of Treasury
University of Canberra

Overseas (discussions held in Sydney)

Royal Institute of British Architects
Royal Institute of the Architects of Ireland
The American Institute of Architects
World Congress of International Union of Architects

A.3 Public hearing participants

New South Wales

Architects Board of New South Wales
Association of Consulting Architects – NSW Branch
Building Designers Association of Australia
Dobrijevic, Peter
Donovan, Peter
Purtell, Mike
Walker, David
Wiegmann, Michael

Victoria

Architects Accreditation Council of Australia Inc
Architects Education and Registration Board of New Zealand
Architects Registration Board of Victoria
Association of Consulting Architects – Victorian Branch
At the Coal Face Pty Ltd
Bandy, Col
Begg, Andrew
Board of Architects of Tasmania
Bruno Taut Institute
Building Designers Association of Victoria
Building Dispute Practitioners Society Inc
Building Practitioners Board
Greenway Hirst Page
Knott, Robert
Royal Australian Institute of Architects

Queensland

A.M. Fitzgerald & Associates
Australian Council of the Professions
Building Designers Association of Queensland

Calabrese, Tony
Cox, David
Davidson, Philip
Gough, Philip
Hackett, Jayne
Jansen, Marie
Queensland University of Technology
Sole Practitioners Group
Trebilcock & Associates
Veal, Basil
Wyeth, Elwyn

South Australia

Architects Board of South Australia
Building Surveyors Accreditation Board and
Development Industry Accreditation Services Ltd
Chappel, John
Cooper, John
Manfredi Design
Maxwell, Tom
Neighbour, Keith

Western Australia

Architects Board of Western Australia
Beetson, David
Brand, Anthony
Cowan, Gregory
Hames Sharley
Hegvold, Laurie
Howlett, Greg
Ivanovich, Sasha
Kent Lyon Architect
Nicholson, Robert
Palassis, Kevin

Parkin, Stephen
Royal Australian Institute of Architects – WA Chapter
Thompson Ong & Associates
Van Bremen, Merryn
Webb, Martyn

B Derivation of the number of practising architects

This appendix estimates the number of persons in Australia who are currently practising (or working) as architects. The Commission is unaware of data which specifically provide this information so it has used the registration data of the Architects Boards as the basis for its estimation.

Registers maintained by State and Territory Architects Boards are lists of those people who have achieved registration under the relevant Architects Act and are therefore eligible to use the title architect (Architects Board of South Australia, trans., pp. 150–151). The registers are not, nor are they intended to be, lists of practising architects.

At the end of 1999 there were approximately 11 600 architect registrations in Australia (table B.1). However, total registrations are not indicative of the number of architects in Australia who are practising, as they include architects who are retired, working in other occupations and so on.

Table B.1 **Registrations and residency of architects, by jurisdiction, 1999[a]**

Jurisdiction	*Total registrations*	*Architects residing interstate or overseas*	*Architects residing in State*
New South Wales[b]	3 309	403	**2 906**
Victoria	3 200	475	**2 725**
Queensland	2 137	360	**1 777**
South Australia	835	142	**693**
Western Australia	1 050	77	**973**
Tasmania	228	56	**172**
Northern Territory	212	142	**70**
Australian Capital Territory	661	373	**288**
Total	**11 632**	**2 028**	**9 604**

[a] Individual architects only — excludes partnerships and companies. Registrations are at mid 1999, end 1999 or early 2000 for all Architects Boards except the Northern Territory. The Northern Territory data are at July 2000. [b] Excludes non-chartered architects.

Sources: State and Territory Architects Boards.

Registrations overestimate the number of practising architects because many are registered in more than one jurisdiction. If double counting is eliminated by

considering only registrations related to architects resident in each jurisdiction, thereby excluding those residing interstate or overseas, the total number of registered architects as at end 1999 was 9604 (table B.1).

But this number still overestimates the number of practising architects because it includes non-practising architects, that is, architects who maintain registration but are not working as architects. It is not possible to determine the total number of these architects because most Architects Boards (New South Wales, Queensland, Tasmania, the Northern Territory and the ACT) do not keep records on this group. Some Boards, however, do keep records — those in Victoria, South Australia and Western Australia.

Data from these three Boards formed the basis for estimating the number of non-practising architects in other jurisdictions (table B.2). Non-practising architects accounted for 13 per cent of total registrations in each of Victoria and South Australia, and 4 per cent in Western Australia. Based on these proportions it was assumed that non-practising architects comprised approximately 10 per cent of registrations in Queensland, Tasmania, and the Northern Territory. A lower proportion (2 per cent) was assumed for New South Wales because the Architects Board in that jurisdiction has a simple and inexpensive system for architects to remove themselves temporarily from the register and reinstate themselves at a later date.

Table B.2 **Estimate of the number of practising architects, Australia, 1999**

Jurisdiction	*Architects residing in jurisdiction*[a]	*Estimate of non-practising architects*	*Estimate of practising architects*[b]
New South Wales[c]	2 906	66[d]	**2 840**
Victoria	2 725	419[e]	**2 306**
Queensland	1 777	214[f]	**1 563**
South Australia	693	112[e]	**581**
Western Australia	973	45[e]	**928**
Tasmania	172	23[f]	**149**
Northern Territory	70	21[f]	**49**
Australian Capital Territory	288	66[f]	**222**
Total	**9 604**	**966**	**8 638**

[a] From table B.1. [b] Derived by deducting the number of non-practising architects from the number of architects residing in that jurisdiction. [c] Excludes non-chartered architects. [d] Two per cent of registrations assumed to be non-practising. [e] Data provided by Architects Boards. [f] Ten per cent of registrations assumed to be non-practising.

Sources: State and Territory Architects Boards.

Estimating the number of non-practising architects in the ACT proved more difficult because the registration system, in effect, has two groups of registered

architects — those registered (once-only for life) who do not hold a practising certificate (73 per cent), and those holding a practising certificate which must be renewed annually (27 per cent). It could be assumed that the former group would comprise a higher proportion of non-practising architects than would occur in other jurisdictions because they are not required to renew their registration annually. On the other hand, those holding a practising certificate are less likely to be non-practising architects than registrants in other jurisdictions. It was therefore assumed that, on balance, the same proportion (10 per cent) be applied to the ACT as was applied to Queensland, Tasmania and the Northern Territory.

Finally, for each jurisdiction, the estimate of the number of non-practising architects was deducted from the number of architects residing in that jurisdiction to provide an estimate of the number of practising architects (table B.2).

It therefore appears that 8600 is a reasonable estimate of the number of practising architects in Australia.

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