

ARCHITECTS ACT 1929

Issues Paper

December 2009

INTRODUCTION

In November 1999, the Commonwealth Government (on behalf of State and Territory Governments) asked the Productivity Commission (PC) to report on legislation in Australia relating to the regulation of the architect profession.

The purpose of the enquiry was to:

- Achieve greater consistency in any regulation of the architectural profession in Australia
- Assist State and Territory Governments in meeting their legislation review obligations under the Competition Principles Agreement.

The final Report of the PC, a *Review of Legislation Regulating the Architectural Profession*, was publicly released on 16 November 2000.

The Report recommended a preferred approach (the repeal of Architects Acts) and an alternative approach (the adjustment of existing legislation to remove elements deemed to be anti-competitive and not in the public interest).

In December 2000, an Inter-Government Working Group (IGWG) was convened to prepare a coordinated States and Territories response to the PC's Report. The IGWG included representatives of all States and Territories.

The IGWG provided a joint response to the Review. In summary, the IGWG supported the PC's broad objectives in seeking improved consumer protection, improved disciplinary methods, and removal of those regulatory elements with an anti-competitive effect which are not in the public interest.

In general, the IGWG considered that the alternative approach (the adjustment of existing legislation) provided the appropriate direction, recognising the variety in jurisdictions and current legislative approaches to the regulation of architects and broader building industry regulation. The alternative approach is seen to provide a suitable framework for the development of a commonality of approach across the Commonwealth allowing both those jurisdictions with Building Acts and those without to regulate architects consistently and congruently with the PC's views.

The IGWG response established a framework of regulatory principles to be realised in each jurisdiction according to their respective preferred legislative vehicle and timing.

Since the IGWG joint response has been released the following States and Territories have passed new or amended architects legislation:

- Queensland - *Architects Act 2002*.
- New South Wales - *Architects Act 2003*.
- Western Australia - *Architects Act 2004*.
- South Australia - *Architects Act 1939 (Amended 2007)*
- Northern Territory- *Architects Act (Amended 2005)*
- Victoria - *Architects Act 1991 (Amended 2009)*

The Tasmanian *Architects Act 1929* has not been subject to a major review in the past 80 years. A review of the Architects Act has been requested by stakeholders over

recent years but has been delayed due to the implementation of the *Building Act 2000*. The then Minister for Justice, Steve Kons, agreed to a review of the Architects Act in April 2008. In May 2008, the Director of Building Control requested that a joint working group of the Royal Australian Institute of Architects (RAIA) and Board of Architects of Tasmania prepare a schedule of comments on the Architects Act pertaining to:

- Harmonisation issues regarding Architects Acts nationally.
- Contemporary governance and drafting issues.
- Potential improvements, additions and deletions.
- Potential amendments to better harmonise with the Building Act and any other Act, the intent being that the professional working group report back to the Act Working Party (under the Director of Building Control) and an Architects Act Amendments Discussion Paper will be prepared for dissemination back to the community.

In November 2008, the Australian Institute of Architects (formerly RAIA) and Board of Architects of Tasmania supplied a schedule outlining issues for inclusion in any discussion paper.

In July 2009 a Project Reference Group was formed by the Director of Building Control and the Project was initiated.

Due to the current workload of the Building Control Branch it was decided that a consultant should be appointed to prepare a Discussion Paper to be used for public consultation.

The purpose of this Issues Paper is to encourage submissions from stakeholders on issues that in their opinion should be considered in any Discussion Paper.

Scope of the Review

The purpose of this review is to determine whether the policy objectives of the Architects Act are still valid and whether the terms of the Act are appropriate for meeting these objectives.

In October 2007, the Council of Australian Governments (COAG) issued *Best Practice Regulation Guide*. The Guide reflects a commitment to establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition.

The Guide outlines COAG's requirement that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed
3. adopting the option that generates the greatest net benefit for the community

4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b. the objectives of the regulation can only be achieved by restricting competition.
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear
6. ensuring that regulation remains relevant and effective over time
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle
8. government action should be effective and proportional to the issue being addressed.

Terms of reference

Any submission should provide written feedback on any issues regarding the operation of the *Architects Act 1929* and indicate whether the stakeholder is prepared to provide future clarification concerning matters raised to the consultant preparing the Discussion Paper, if deemed necessary. Parts 2 to 11 of this Issues Paper contain questions designed to address concerns raised with the operation of the Act by stakeholders over recent years. It is expected that by addressing these questions stakeholders will be supplying significant input into the review. However, stakeholders are welcome to submit further information if they do not believe providing answers to the questions will fully address their concerns.

Purpose of Issues Paper

The purpose of this 'Issues Paper' is to encourage individuals and organisations, the architect profession and consumers to provide input to the review.

Invitation to make a submission

As a part of the review, the Director of Building Control is seeking written submissions responding to the review's Terms of Reference.

The closing date for submissions is **29 January 2010**.
Submissions should be addressed to:

Director of Building Control
Workplace Standards Tasmania
PO Box 56
ROSNY PARK TAS 7018

OR emailed to wstinfo@justice.tas.gov.au

OVERVIEW OF ARCHITECTS ACTS

In Tasmania, the Board of Architects of Tasmania is empowered by the *Architects Act 1929* to:

- register architects
- regulate the practice of architecture
- conduct hearings to determine if an architect is guilty of infamous or improper conduct
- approve practical experience
- conduct examinations for registration.

To apply for registration in Tasmania a person must satisfy the qualification requirements established under Section 13 of the Act. This includes two years practical experience with an architectural practice and completion of an examination in architectural practice set by the Architects Accreditation Council of Australia (AACCA) and run by the Board of Architects of Tasmania.

While it could be said that the Architects Act was developed in another era (1929), many of its provisions are reflected in similar laws currently in place around Australia. Previously, some stakeholders have stated that the current Act appears to have as its prime objective the aim of sustaining the profession of architects. Under contemporary legislation development requirements such law would find it difficult to meet the onerous competition policy principals that all new legislation is subject to. Interstate laws address this issue by having a greater focus on consumer protection and ensuring the structure of Architect Boards and complaints systems address this focus.

In New South Wales, the Architects Registration Board administers the *Architects Act 2003*. The Board's key role is to protect consumers of architectural services by ensuring that architects provide services to the public in a professional and competent manner, disciplining architects who have acted unprofessionally or incompetently, accrediting architectural qualifications for the purpose of registration, informing the public about the qualifications and competence of individuals or organisations holding themselves out as architects, and promoting a better understanding of architectural issues in the community.

In Victoria, the Architects Registration Board of Victoria (ARBV) is empowered by the *Architects Act 1991* to:

- register architects and approve architectural companies and partnerships
- investigate complaints and arrange Tribunal inquiries into professional practice on behalf of the public or offer mediation
- determine architectural qualifications and accredit courses
- conduct examinations for registration
- require Architects to be registered and have Professional Indemnity Insurance cover to practice as an architect.

These legislated powers enable the ARBV to act on behalf of consumers.

In Queensland, the Board of Architects of Queensland is established under the *Architects Act 2002* (The Act). The Act provides for the registration of appropriately qualified persons as architects. The Board has powers to investigate complaints made about registered architects in specified circumstances and lay charges if necessary before the Commercial and Consumer Tribunal. The Act also gives the Board powers to prosecute persons who use the title "architect" or "registered architect" or who hold out that they are architects when they are not registered as such and the Act also provides severe penalties for "holding out" offences.

In Western Australia, the Board of architects is established under the *Architects Act 2004* (The Act). The Board is the body authorised to examine, register and investigate complaints about architects and those fraudulently claiming to be architects. Although the Board reports to State Parliament through the Minister for Housing & Works, it is entirely self funded by architects. The Board is composed of ten members. Four are elected by architects, six are appointed by the Minister, including four community representatives and two architects. Only architects registered by the Board may describe themselves as architects. The *Architects Act 2004* also requires that corporations describing themselves as architects must be licensed with the Board.

In South Australia, the Architects Board is the statutory authority responsible to the Minister for administering the *Architects Act 1939*, 'which provides for the registration of architects, to regulate the practice of architecture, and for purposes incidental thereto'. The Board is composed of three persons appointed by the Governor and six architects elected by architects registered in South Australia. All members of the board act in an honorary capacity. The Board is responsible for maintaining a register of architects and architectural companies and for ensuring that only properly qualified and experienced people are listed on the register of architects, and only companies which satisfy the requirements of the Architects Act are registered as architect companies. The Board has a statutory role to investigate complaints made against architects and against unregistered persons holding themselves out to be architects and also to discipline those who are found to have contravened the Act. The Board accredits architectural courses and promotes knowledge of architecture amongst the public.

In the Australian Capital Territory, the Architects Board ensures registered architects provide services to the public in a professional and competent manner. The board has a range of powers to investigate complaints against architects and to discipline those who are found to have acted unprofessionally or incompetently. The Board is made up of five members each appointed for up to three years by the Minister for Planning. The current members are an academic architect, a commercial lawyer, a registered architect, a representative of a group promoting architects' interests and a community interest representative. The Board's functions are to:

- register architects
- investigate complaints given to the Board about registered people and people who have been registered
- consider whether it is necessary to take disciplinary action against registered people and people who have been registered and, if it is, to take the necessary action
- consider and report to the Minister about issues referred to the Board by the Minister for advice

- advise the Minister in relation to the practice of architecture, for example, about codes of professional conduct
- further a common and harmonious approach to the administration of legislation about architects by cooperation with local jurisdictions
- accredit courses of study in architecture
- provide general advice to consumers about the professional conduct and standards of competence expected of registered architects.

In the Northern Territory, the Architects Board is established under the *Architects Act*. The Board's functions include the establishment and maintenance of registers for registering architects, architectural companies and architectural partnerships, accepting applications for registration in these categories, and dealing with complaints under the Act in relation to registered architects. The Board also conducts architectural practice examinations as part of a national system, as a basis for registration.

Questions

- a. Do the objectives and functions of the *Tasmanian Architects Act 1929* remain valid?
- b. Should the objectives and functions be changed? If so, what should the objectives be?

HARMONISATION OF LEGISLATION

Tasmanian architects are currently required to meet requirements under both the *Architects Act 1929* and *Building Act 2000* (in circumstances where they are responsible for the design, documentation or certification of the design or inspection of building work, plumbing work, building or plumbing installations). Architects, who wish to promote themselves as Architects must apply for registration with the Board of Architects Tasmania, pay a registration fee and may choose to provide evidence of CPD under a voluntary scheme administered by the Australian Institute of Architects. Under the *Building Act* architects are required to apply for accreditation, pay an accreditation fee, provide evidence of Professional Indemnity Insurance and Continuous Professional Development (CPD) if they are the architect taking responsibility under the *Building Act*. However, registration as an architect under the *Architects Act 1929* is the required qualification under the *Building Act 2000*.

Questions

- a. Do you believe that harmonisation is necessary, if so please identify the harmonisations issues to be resolved?
- b. If so, should the requirements be contained in the *Building Act* or *Architects Act* or elsewhere?

REQUIREMENTS FOR QUALIFICATION AND PROFESSIONAL INDEMNITY INSURANCE

Currently, nationally consistent qualifications are accepted for the basis of registration under the Architects Act. There are also no requirements for all architects to hold Professional Indemnity Insurance (PII) or to undertake Continuing Professional Development (CPD) in the *Architects Act 1929*. However, if an architect is accredited under the Building Act they are required to undertake CPD and must hold current Professional Indemnity Insurance.

Questions

- a. Do you believe these qualifications are appropriate and if not please advise what you consider to be appropriate qualifications?
- b. Do you believe architects should be required to undertake CPD irrespective of whether they are accredited under the *Building Act 2000*?
- c. Do you believe that PII should be mandatory for all registered architects, please provide your reasons?

NON-PRACTISING ARCHITECT

If CPD and PII were to be mandatory for practising architects it may be necessary to introduce a non practising category or registration to allow for architects that have decided to take time out of the profession or who do not actively engage in architecture for whatever reason.

Questions

- a. Should legislation allow for a category of 'non-practising architect', if not please provide your reasons?

OVERSIGHT AND DISCIPLINARY PROVISIONS

There is concern that the current oversight and disciplinary provisions of the Architects Act are inadequate to provide for timely and fair investigation of complaints or to act as a deterrent from unsatisfactory professional conduct. The Architects Act provides for the Board of Architects to hold proceedings in relation to matters outlined in section 16, including hearing an allegation that a registered architect is guilty of infamous or improper conduct in a professional respect, or does not possess the qualifications in respect of which he was registered. Currently, the maximum fine for an Architect found guilty of misconduct by the Board of Architects is \$200. There is no established appeal mechanism available to architects, which means if they believed the decision of the Board is unjust or compromised it would result in a court action. Such matters would be time consuming and expensive to fund. This is especially the case if the architect is without employment as a result of the decision. Furthermore, there is conjecture over whether complaints should be heard by the Board of Architects, a Board appointed committee or via an independent body. Despite the existence of a Code of Conduct (developed by the Architects Accreditation Council of Australia and Australian Institute of Architects) the

requirement to meet the standards set out in the Code of Conduct are not a requirement of the Architects Act.

By comparison, there are disciplinary provisions for accredited architects under the *Building Act 2000* which can be exercised as a result of a complaint. The complaint investigation process is supported by Investigation staff employed by the Director of Building Control and if there are grounds for an appeal this can happen through either the Building Appeal Board or Magistrates Court Administrative Appeals Division. The Building Appeal Board is a body of at least 7 persons appointed by the Minister for Justice under the *Building Act 2000*.

Questions

- a. Is there need for an independent and impartial review body to assess and investigate complaints concerning unsatisfactory (improper) professional conduct or professional misconduct?
- b. Is there need for an independent and impartial body to review decisions concerning unsatisfactory (improper) professional conduct or professional misconduct?
- c. Is there any reason why these mechanisms could not be established under the *Building Act* rather than the *Architects Act*? Please provide reasons for your position?
- d. Do you believe that current disciplinary provisions are adequate to act as a deterrent, if not what do you consider is an appropriate maximum fine or what other alternative do you propose to a fine?
- e. Do you believe it is appropriate for complaints to be heard by the Board of Architects, if not, what structure do you suggest for the consideration of complaints?
- f. Should legislation provide for the development of a Code of Conduct to establish standards of behaviour for Architects?
- g. Under what circumstances do you believe it is appropriate for an architect's registration to be removed or suspended? For instance in your opinion is it appropriate to remove or suspend registration when;
 - Registration has been obtained by fraud or misrepresentation or concealment of facts?
 - The qualification used for registration has been withdrawn by the issuing institution or body?
 - The registered person has been convicted of any felony, misdemeanour or offence?
 - The registered person has been found guilty by a Board or convicted by some other body of any offence against the *Architects Act* or the regulations with respect to unsatisfactory professional conduct or professional misconduct?

- The registered person has been found guilty by a Board of improper acts or omissions in relations to the practice of architecture?
- The person has advised or published falsely that any certificate of registration has been obtained under the Act.
- The person has died?
- The person is incapable of acting as an architect (due to illness etc)?
- The person has not paid a fee levied under the legislation?
- The registration of a person has been revoked in another State or Territory for a matter other than the non payment of fees?
- The registered person has failed to comply with any Architects Code of Professional Practice?
- An organisation no longer complies with a condition of registration?
- A company's registration has been deregistered by the Australian Securities and Investments Commission (ASIC) or a court?
- A registered company applies to ASIC for deregistration?
- A company's registration has been obtained by misrepresentation or fraud?
- A company no longer complies with the prescribed requirements for registration?
- A company no longer complies with the prescribed requirements for listing?
- Are there any further reasons for removing registration?

REGISTRATION OF INDIVIDUALS AND ENTITIES

Many architectural service providers are established as entities either in the form of a Corporation or Partnership. Under the Victorian *Architects Act 1991* architectural companies and partnerships are required to be registered. Under the Western Australian *Architects Act 2004* corporations describing themselves as architects must be licensed. If registration of these entities was to be introduced an important consideration is the qualification structure for registration.

Questions

- a. Is there a need for Architects registration now that responsible Architects must be accredited under the *Building Act 2000*?
- b. Should registration of architectural entities be introduced? Please provide your reasons whether you support or do not support registration?
- c. If entities are registered, should there be a registration requirement that ownership is by a majority of architects (Directors, partners, owners, shareholders), ownership is entirely architects or a requirement such as all architectural work must be carried out under the direct control and supervision of an architect?

COMPOSITION AND FUNCTIONS OF ANY ADMINISTERING AUTHORITY

The Productivity Commission Report released in August 2000 highlighted that Boards such as that established under the Architects Act may serve the interests of architects rather than consumers. The reasons given were architect domination of Architects Boards, combined with a lack of transparency and independent scrutiny of Board procedures, and inaccessible, limited and often complex procedures for consumer complaints. An important principle of composition for accountability and consumer protection is that non-architects have representation of any Board.

Currently the Board of Architects Tasmania consists of the following 5 members:

1. The President of the Institute of Architects
2. Two persons appointed by the Governor
3. Two persons, who shall be practising architects, elected by the council of the Institute in the manner prescribed.

To address the consumer protection issue the Board could include:

1. The President of the Australian Institute of Architects
2. The State Architect
3. A consumer representative
4. An academic member
5. A legal member
6. Two elected practising architects

Questions

- a. Is the current Board structure appropriate, if not what is an appropriate structure for any Board?
- b. If the second structure were to be established in legislation, should Board members be elected by registered architects or through the Australian Institute of Architects or some other alternative?
- c. Should the fees payable to board members be established in legislation (as is currently the case), determined by a Board established under legislation or determined by a statutory officer such as the Director of Building Control?
- d. Should members of the board be protected from personal legal loss as a result of actions or decisions made in good faith as a Board member?
- f. Currently the title is legislated as 'Board of Architects'. In previous questions the possibility of a change of board structure has been explored, what do you consider to be an appropriate name for any Board if the structure changes?
- g. Do you consider it is appropriate role for a Board of Architects to administer Professional Indemnity Insurance requirements, Continuous Professional Development requirements, disciplinary matters, consumer complaints and charge fees for registration?
- h. Do you consider it appropriate for a Board of Architects to have the ability to consider a relevant finding of misconduct or guilt under another law (for instance the *Building Act 2000*) when assessing the ongoing registration of an architect?

PROHIBITIONS

The Tasmanian Architects Act prohibits a person;

- who is not an architect from describing themselves as an architect
- from describing themselves as something that sounds or looks like the word 'architect'
- from using or describing themselves in such a way that it indicates that they are registered or entitled or qualified to be registered as an architect
- who is not an architect from using a title that indicates that the person has obtained a professional or legal qualification of an architectural nature in respect of building operations, plans, drawings, or specifications (other than the expressions 'engineer', 'structural engineer', 'architectural draughtsman', 'architectural designer', 'master builder' or 'builder').
- from using or publishing in connection with architecture any title, name, words or letters which indicate that the person is qualified for, or entitled to, registration as an architect other than if it is truly a qualification that the person holds.
- from accepting any commission or substantial service or favour from any person who has contracted to execute any work in connection with a building designed or supervised by them. The same is the case for a person who has offered or agreed to supply materials, fittings or appliances in connection with any such building.

Questions

- a. Do you consider the prohibitions to be appropriate, or do you believe they should be expanded or reduced. If so please provide examples and the reasons for the suggestions?
- b. Could the prohibition clauses be inserted in some other Act such as the *Building Act 2000*? Please provide reasons for your position?

MISCELLANEOUS

Questions

- a. Is there any other issue that you believe should be considered as part of this review?
- b. Are you happy to discuss any of the above responses with the consultant preparing the discussion paper if they require clarification?

AR015
December 2009

CONTACT DETAILS

Workplace Standards Tasmania
PO Box 56 Rosny Park TAS 7018
Phone: 1300 366 322 (inside Tasmania)
(03) 6233 7657 (outside Tasmania)
Email: wstinfo@justice.tas.gov.au
Web: www.wst.tas.gov.au

