Competition Policy And The Regulation Of The Professions

- **Michael Peck, Chief Executive,**
Royal Australian Institute Of Architects.

The National Competition Policy Agreement ("NCPA") of the Council of Australian Governments ("COAG") will lead to a review of most of the occupational legislation in Australia.

During the review process it will be argued that laws which limit the use of a professional title or the right to practice are anti-competitive because they prevent others who may wish to from using a professional title or providing a professional service.

It will be the responsibility of the Review Panels, on a case by case basis, to decide whether the public benefit that comes from this type of legislation outweighs the anti-competitive arrangement of limiting the right to title and practice to those who are qualified, experienced and required to maintain standards of service.

Unfortunately, the Australian Federal system of government creates the spectre of eight State and Territory Reviews dealing with the same occupation and producing eight different results.

The issues of occupational legislation are complex, they cannot be considered as confined to State jurisdictions as there are very significant national and international ramifications. A consideration of the architectural profession will serve to illustrate some of these complexities, although the legislation applying to each profession varies considerably.

All States and Territories have nominated their Architects Acts for review under the NCPA. Architects Acts were introduced and have been progressively refined to enable the public to identify people who have certain qualifications and experience and to ensure that those people provide services to standards established by regulations under the Act. This type of legislation in Australia is "Titles" legislation, which means only people registered under the Act may use the title "architect". Anyone may offer and provide the services normally provided by architects but the public interest is served because it is known that only "architects" are suitably qualified and regulated. It is an offence under the Act to use the title if one is not registered by the relevant State Board.

It will be argued that this arrangement is anti-competitive and that if the legislation did not exist, anyone who wished could not only provide architectural services but could also call themselves "architects". It will further be argued that this would produce more competition and that the public would soon determine which providers of architectural services are qualified, competent and produce satisfactory service.

Experience in most developed countries indicates this notion does not work in practice. Most consumers of architectural services are not well informed when they enter into a transaction for service and by the time they become sufficiently informed, the consequences of acting upon the advice of an unqualified practitioner can cause extreme economic hardship.

In the case of architectural services, unlike many other professional services, there is the added problem that consumers normally only contract for architectural services once or twice in a lifetime. Consequently, there is little prospect of educating the general public to the level of being well informed consumers able to differentiate between the services being offered by a qualified competent practitioner and an unqualified practitioner.

In the event that the Review process leads to the Architects Acts being repealed and, therefore, anyone being able to take the title architect, the public would seek some way of identifying people with architectural qualification and standing. Members of the Royal Australian Institute of Architects would clearly be an identifiable group. However, it is unlikely that public confidence would be maintained in an arrangement in which the qualification standards and discipline of the profession are determined by the organisation established to serve the interests of the profession.

The Institute has considered this prospect and believes that whilst there may be short term gains for its members, the long term issue of public confidence in the profession is the main consideration. On the other hand a statutory national backed system under which the Institute administers a Registration Board made up of professional and public representation may find enduring public acceptance.

These are some of the issues that have led to most developed countries adopting a form of statutory backed regulation and registration of architects. A recent survey of fifty-seven countries by the National Council of Architects Registration Boards of the United States reveals that all but 8 have a statutory system of occupational registration for architects similar to current Australian legislation. China is also about to introduce a similar system.

Currently 22% of Australian architectural fees come from services delivered offshore. So the prospect of the Review process dismantling the current Australian Architects Acts, which complies with world's best practice, has significant implications for the international standing of Australian architects.

The best result for Australia is likely to come about if the States heed the Federal Treasurer's call for a single national review of Architects Acts and that the Review results in nationally uniform legislation conforming to the standards currently being established by the International Union of Architects ("UIA").

The draft UIA Guidelines for Registration/ Licensing/Certification of Architects, which are being prepared to guide governments in the WTO negotiations relating to trade in architectural services, states *"that legislation or statutes regulating the profession of architecture should be based on the regulation of the practice of architecture*".

Whilst COAG can be congratulated in formulating an Agreement designed to make Australia more competitive, it is clear that the process of occupational legislative reviews could produce the opposite effect and also lead to less protection for domestic consumers. ❑