

CURRENT

**National Competition Policy
Review of Architects and Building Legislation**

**Government Response
December 2003**

**Building Commission
Victoria**

CONTENTS

1.0	NATIONAL COMPETITION POLICY.....	4
1.1	Executive Summary	4
2.0	VICTORIA AND NATIONAL REVIEWS	9
3.0	VICTORIA REVIEW - SCOPE OF THE REVIEW	9
4.0	VICTORIAN LEGISLATION BACKGROUND	10
4.1	Architects Act 1991	10
4.2	Building Act 1993	11
4.3	Victoria Review – Process	11
5.0	VICTORIA REVIEW OF ARCHITECTS AND BUILDING LEGISLATION	12
5.1	Summary of Freehills Regulatory Group Findings	12
5.2	Provision of Architects Legislation.....	17
5.2.1	FRG 4.4 - Constraints on use of the title “architect” to registered architects.....	17
5.2.2	FRG 4.5 - Control on the ownership of organizations using the title “architect” and its derivatives	17
5.3	Provision of Architects Regulations	18
5.3.1	Recommendation 1- Constraints regarding Developer.....	18
5.3.2	Recommendation 2 Prohibition on Endorsements.....	18
5.3.3	Recommendation 3 - Constraints on Financial	19
5.3.4	Recommendation 4 - Public Sector Employees	19
5.3.5	Recommendation 5 - constraint on Seeking Business	20
5.3.6	Recommendation 6 - Other Provisions	20
5.3.7	Recommendation 7 - Professional Conduct Standards.....	21
5.4	Provision of Building Legislation	22
5.4.1	Recommendation 6.4 - Title constraints and registration of building practitioners (Sections 169, 172 and 176).....	22
5.4.2	Recommendation 6.5 - Compulsory insurance provisions (Part 9, Division 3) .	23
5.4.3	Recommendation 6.6 - Building permit requirement (Part 3) and occupancy permit requirement (Section 39).	24
5.4.4	Recommendation 6.7 - Exemptions for public sector employees and the Crown (Section 176(5)(a)).....	24
5.4.5	Recommendation 6.8 - Building permit levy and the building administration fund (Sections 200 and 201).	26
5.4.6	Recommendation 6.9 - Other provisions	28

5.4.7	Recommendation 7.5 - Integration of the Architects Legislation and the Building Legislation.....	28
6.0	NATIONAL REVIEW ARCHITECTS LEGISLATION – SCOPE OF THE REVIEW.....	30
6.1	National Review – Process.....	30
6.2	National Review Architects Legislation, Inter-Governmental Working Group	31
6.3	National Review Architects Legislation	32
6.4	Provision of Architects Legislation.....	33
6.4.1	Principle 1 - Board Representation	34
6.4.2	Principle 2 - Restrictions on Practice.....	36
6.4.3	Principle 3 - Restriction on Title.....	36
6.4.4	Principle 4 - Registration	37
6.4.5	Productivity Commission Finding 10.9 - Ownership Restrictions	38
6.4.6	Principle 5 - Consumer Complaints Procedures	39
6.4.7	PC Finding 10.4.1 - Increasing the accessibility of complaints mechanisms	39
6.4.8	PC Finding 10.4.2 - Separating investigative and disciplinary functions.....	40
6.4.9	PC Finding 10.4.3 - Appointing independent bodies to conduct disciplinary proceedings.	40
6.4.10	PC Finding 10.4.4 - Appointing a majority of non-architects members to complaints and disciplinary bodies.....	41
6.4.11	Consumer protection into legislation.....	41
6.4.12	Principle 6 - Contestability	42
6.4.13	National Registration	42
6.4.14	Mutual Recognition	43
7.0	VICTORIA AND NATIONAL REVIEWS – IMPLEMENTATION OF REGULATORY REFORM	44
	APPENDICES.....	45
	STATES AND TERRITORIES WORKING GROUP ON A COORDINATED RESPONSETO THE NATIONAL COMPETITION POLICY REVIEWOF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION	46
	Architects Act 1991	51

1.0 NATIONAL COMPETITION POLICY

1.1 EXECUTIVE SUMMARY

The purpose of this Response is to provide the Government's views on and proposed actions to the "NCP Review of Architects and Building Legislation" involving the Architects Act 1991, Architects Regulations 1993, Building Act 1993 and Building Regulations 1994 carried out by Freehills Regulatory Group.

This Response also addresses the Productivity Commission Inquiry report "Review of Legislation Regulating the Architectural Profession" by reference to the Inter-Governmental Working Group's Response to the Productivity Commission's report. The Working Group's Response establishes agreed principles within which each State could reform its Architects legislation.

Victoria's system regulating the construction industry aims to protect the safety and health of the people of Victoria and to provide consumer protection in regard to services provided by the building industry. The system introduced in 1994 has laid the foundations for the improvement of the construction industry's standards and competitiveness. It is based on the regulation of building practitioners, which supported the introduction of liability reforms and mandatory practitioner insurance.

The architects legislation also aims to provide consumer protection in regard to architect's professional conduct in the provision of services to clients. This is based on regulation of the use of the title "architect" and conduct.

The Government Response generally proposes the adoption of the Freehills Regulatory Group's recommendations in respect of both the Architects and Building legislation NCP Review. The principal exceptions are the proposal for the Building Act to provide for registration of all company and employee practitioners until a net benefit has been adequately demonstrated and the integration of architect and building legislation.

The Government Response in respect to the Productivity Commissions Alternative Recommendation regarding architects legislation meets four of the six principles contained in their report and represents a substantial move towards implementing competition principles within Victoria's system of registration of building practitioners. The two Productivity Commission principles not proposed for adoption at this time are those relating to the removal of title restrictions and practice ownership although some relaxation of regulation in these areas is proposed. The Freehills Regulatory Group's recommendations in respect of the same issues are accepted.

It should be noted that the Victorian Architects Act 1991 already contains a number of reforms that some other jurisdictions have yet to make. These include the industry and consumer representation on the Architect's Board, well-developed complaints and disciplinary procedures and provision for flexibility of access to registration through recognised alternatives.

Table 1. Victoria Review - Competition Restrictions, Consultant's Recommendations and Government's Proposed Response

*FRG refers to the NCP Review of Architects and Building Legislation – Final Report

Restriction and report reference	Nature of Restriction	Freehills Regulatory Group Consultant Recommendation	Government Response
1 FRG* 4.4	Title restriction and registration requirements	Recommend retaining title restriction and registration requirements for architects	Recommendation partially adopted to retain existing title restriction and registration requirements while removing the broad restriction on the use of derivatives.
2 FRG 4.5	Ownership provisions	The ownership provisions should be amended to ensure that in firms which use the title architect, or hold themselves out as offering architectural services, at least one director or partner should be registered	Recommendation adopted accepted to match Building Act provision
3 FRG 4.6	Constraints on Acting as developer and architect	Regulations 8, 9 and 12 should be repealed and Regulation 10 be amended to require an architect, acting as a developer and architect, to give the client notice in writing of the scope of his or her different roles.	Recommendation adopted
4 FRG 4.7	Prohibition on endorsement of materials, components, services or products	Recommend repeal regulation 13. Regulation 13 imposes costs without achieving benefits over and above those achieved by Regulations 5, 6, 7, 10, 14 and 15 to achieve higher net benefits.	Recommendation adopted
5 FRG 4.8	Constraints on accepting financial advantages	Recommend that Regulation 15 be repealed and Regulations 5, 6, 7, 10 and 14 be relied on	Recommendation adopted
6 FRG 4.9	Exemptions for public sector employed architects	Recommend to repeal these exemption provisions to ensure that all architects, including private and public sector employees, are treated equally by the provisions	Recommendation not supported – competitive neutrality issue has been removed
7 FRG 4.10	Constraints on seeking business from clients of other architects	Recommendation to repeal Regulation 19 because contract law provides adequate redress for an architect in the event of breach by a client	Recommendation adopted
8 FRG 4.11	Observations on other provisions <ul style="list-style-type: none"> • General standards of professional conduct • Working for a developer 	<p>1. Regulations 5, 6, 7, and 10 - do not consider these provisions create a restriction on competition</p> <p>2. Regulation 12 – do not find this amounts to restriction on competition in our view there is no apparent need or justification for</p>	<ul style="list-style-type: none"> • No action recommended - observation noted • Not a competition issue but Regulation to be repealed.

	<ul style="list-style-type: none"> • Correctness of advertising material • Disclosure of identity of architects • Defining terms of engagement 	<p>(it)</p> <p>3. Regulation 16 – not clear that (this regulation) adds additional obligations over and above common law and TPA obligations</p> <p>4. Regulation 17 – Do not find this amounts to a restriction on competition (but) no apparent need or justification</p> <p>5. Regulation 18 – No recommendation/view provided</p>	<ul style="list-style-type: none"> • Not a competition issue but Regulation to be repealed. • Not a competition issue and Regulation to be retained but revised for current communication methods • Not a competition issue and Regulation to be retained.
9 FRG 6.4	Title constraints and registration of Building Practitioners	<p>a). To improve monitoring and enforcement, we recommend that companies and partnerships be subject to registration requirements</p> <p>b). All practitioners whether sole or employed (should be) required to be registered (except) the building practitioner employees of adequately insured companies and partnerships.</p> <p>c). Registration levels and compliance levels should be reported by the BPB and should be a key performance indicators. Regulatory Impact Statements should be prepared.</p>	<ul style="list-style-type: none"> • Undertake a detailed review of the FRG proposal to increase regulation and retain existing legislation in regard to this issue in interim • No increase in regulation is proposed until benefit is established • BC Corporate Plan 2001 to 2006 includes a series of performance indicators. View supported on need for RIS process.
10 FRG 6.5	Compulsory insurance	Recommend retention of the Minister’s power to issue compulsory insurance orders	<ul style="list-style-type: none"> • Recommendation adopted to retain existing provision
11 FRG 6.6	Requirements to obtain a building permit and occupancy permit	<p>a). Recommend ongoing use of audits of building surveyors to ensure that standards are maintained and fostered.</p> <p>b). Recommend that consideration be given to conducting a study into the case for integration of the planning permit application process and building permit provisions.</p>	<ul style="list-style-type: none"> • Recommendation agreed and standards to be maintained • Recommendation - principle of greater integration of planning and building permit processes supported
12 FRG 6.7	Exemptions for public sector employees and the crown	<p>a). Recommend the repeal of provisions which grant exemptions to public sector employees, public authorities and the Crown.</p> <p>b). Recommend retention of those provisions which exempt certain high security Crown buildings from the requirement to lodge permit documents with the relevant council</p> <p>c). The Crown exemption in respect of the re-erection of any relocatable building used as a school should also be retained</p>	<ul style="list-style-type: none"> • Recommendation not supported - balanced by alternative legislation and non-legislative provisions • Recommendation adopted to retain existing provision • Recommendation adopted to retain existing provision

<p>13 FRG 6.8</p>	<p>Building Permit levy and the building administration fund</p>	<p>a). Our view is the levy should be based on a formula that is cost-reflective and includes incentives for cost effective administration of the legislation b). Suggestion of practitioner registration fees paid to Building Practitioners Board c). Recommend that the regulatory bodies develop key Performance Indicators d). Suggestion that the Government consider undertaking a review of regulatory bodies</p>	<ul style="list-style-type: none"> • Recommendation not supported - more elaborate system of levy determination unnecessary • Suggestion noted • Recommendation adopted and met by BC Corporate Plan 2001-2006 • Suggestion noted and undertaken by Auditor-General Performance Audit
<p>14 FRG 6.9</p>	<p>Benefits that outweigh the costs and that there are no higher net benefit alternatives</p>	<p>We do not recommend amendment to these provisions:</p> <ul style="list-style-type: none"> • owner-builder limitations • Essential services provisions. • Accreditation of building products, • Minister's power to issue guidelines • Time constraints applying to building work • Regulation of places of public entertainment and temporary structures 	<ul style="list-style-type: none"> • Recommendation adopted to retain existing provisions. • Note - Regulation of places of public entertainment separately reviewed by Auditor-General Performance Audit. Legislation change to remove BC's role of building surveyor planned.
<p>15 FRG 7.5</p>	<p>Integration of the Architects Act and the Building Act</p>	<p>a). Find net benefits can be obtained from the integration of the Architects Legislation and the Building Legislation</p> <p>b). Experience and effectiveness of ARBV should assist an amalgamated ARBV and BPB</p>	<ul style="list-style-type: none"> • Recommendation not supported as national consistency will provide greater benefits. Greater alignment in Victorian Architects and Building legislation proposed. • Recommendation supported but by alternative means including ARBV nominated representative on the BPB

Table 2. National Review - Competition Restrictions, Productivity Commissions Recommendations and Government's Proposed Response

Restriction and Principle reference	Nature of Restriction	Productivity Commission Recommended Principle	Government Response
PC 1	Balance of representation on architect's Boards	that architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);	Principle of broad representation accepted while retaining an Architect's Board. Board proposed to have increased industry and consumer representation with non-majority architect representation
PC 2	Practice restriction	that there be <u>no</u> restrictions on the practice of building design and architecture;	Principle accepted - No restrictions on the practice of architecture
PC 3	Title restriction and registration requirements	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;	FRG recommendation 4.4 partially adopted. Retention of title control over "architect" proposed while removing the broad restriction on the use of derivatives.
PC 4	Ownership provisions	that only principals (persons, not companies) to contracts be required to be registered;	Principle partially adopted that persons be registered – related FRG recommendation 4.5 adopted . Ownership provisions in Architect's legislation to be consistent with Building Act provisions of one director/partner to be registered. Architects to supervise and be responsible for services
PC 5	Complaints and disciplinary proceedings	that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures	Principle accepted – Current system generally meets principle. Increased independence of disciplinary processes proposed.
PC 6	Contestability of certification	that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration).	Principle accepted - Registration to be achievable by combinations of qualifications and experience

2.0 VICTORIA AND NATIONAL REVIEWS

In April 1995 the Council of Australian Governments (COAG) agreed to implement a National Competition Policy (NCP) reform package designed to broaden the scope of competition policy. The Governments agreed to review and, where appropriate, amend or repeal – by the end of the year 2000- all legislation that restricts competition. COAG agreed in November 2000 to extend the deadline for completion of NCP legislation review implementation to 30 June 2002.

Victoria produced a report on its NCP Review of Architects and Building Legislation in February 1999. This report was subject to further public consultation that was undertaken by September 2000.

In November 1999 the Assistant Treasurer, Commonwealth Government, requested the Productivity Commission to conduct a national review of legislation regulating architects, “on behalf of all States and Territories except Victoria which has completed its review”.

In August 2000 the Productivity Commission (PC) completed its Review of Legislation Regulating the Architectural Profession. The Commonwealth Government released the inquiry report in November 2000.

Arising from the PC Review and at the invitation of the Premier of NSW, an Inter-Governmental Working Group (IGWG) was created to develop a joint response to the PC’s report supported by each jurisdiction. The Victorian Premier agreed that Victoria should participate in this working group with the Commissioner, Building (Control) Commission as its representative. Victoria supported this initiative to “develop an inter-governmental response to the (PC) Report as it would ensure greater consistency between States and Territories.”

The IGWG produced a draft “Coordinated Response to the National Competition Policy Review of Legislation Regulating the Architectural Profession”. Refer Appendix A. The IGWG Response incorporated general support for the PC’s recommended principles for States and Territories that require building practitioners to be registered, as is the case in Victoria.

The Victorian Government Response to the National Competition Policy Review of Architects and Building Legislation therefore contains elements of both the Victorian Review and the National Review.

3.0 VICTORIA REVIEW - SCOPE OF THE REVIEW

Victoria is a party to the Competition Principles Agreement (CPA) that was signed in 1995 by the Council of Australian Governments, one of three agreements to give effect to National Competition Policy.

The Victorian Government agreed to review and, where necessary, reform all existing legislative restrictions on competition. As part of this process the Minister for Planning and

Local Government commissioned the NCP Review of the Architects and Building Legislation.

The review adheres to the principles set out in the CPA and the Victorian Government Guidelines for the Review of Legislative Restrictions on Competition (Guidelines).

As the scale of the review had been assessed as “complex-minor”, the review was conducted in accordance with Model 2, “Semi-public”, of the Guidelines.

4.0 VICTORIAN LEGISLATION BACKGROUND

4.1 ARCHITECTS ACT 1991

Since 1922, architects practising in Victoria have been regulated under an Architects Act, the most recent Act being enacted in 1991. These Acts have restricted the use of the title architect to those persons who have qualifications and experience acceptable to the Architects Registration Board of Victoria (ARBV). The legislation restricts the use of the title architect to registered persons, but not the practice of architecture or building design. Similar legislation exists in other States of Australia. The operations of the Architects Registration Board of Victoria are funded by fees and charges on the profession and there are no costs to government.

A review of the regulation of architects, by the Government’s Regulation Review Unit, resulted in a final report in 1990, which accepted the continuation of the regulation of architects, but recommended enhanced consumer protection provisions. The review was undertaken in the context of the government's policy that regulation should be the minimum necessary to achieve community objectives.

Key features of the legislation changes implemented after the 1990 review included:

- consumer protection achieved through a disciplinary tribunal system for complaints handling;
- broader membership of the ARBV including consumer representation;
- recognition that Victoria now has three schools of architecture;
- recognition of incorporation of sole practitioners;
- continuation of the principle of no cost to government; and
- continuation of protection of the title architect.

The Act did not increase regulation of the practice of building design but continued to regulate the title architect and improved consumer protection through a disciplinary tribunal system.

In the Second Reading speech for the 1991 Architects Bill it was stated that “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 that the Architects Act is made as efficient and effective as possible and that consumer interests are protected.”

While the Victorian Architects Act 1991 is relatively recent legislation the National Competition Policy Review of the Architects (and Building) Legislation is a further opportunity to improve its effectiveness and develop increased consistency with other States.

4.2 BUILDING ACT 1993

The adoption of the Building Act 1993 by the Victorian Government marked a significant change in Victoria's approach to building control. Prior to the introduction of the new Act, a widely held view was that the former building legislation was restrictive and often involved frequent delays for approval, resulting in additional holding costs for developers and consumers. In response, the Building Act 1993 opened areas of the approval process, that was formerly the exclusive province of local government, to competition from private building surveyors. The Building Act 1993 has ushered in a self-managing, self-funding system driven by client needs and agreed standards of professionalism.

The introduction of competition into the building control system necessitated a dramatic change to the way in which this system operated in the past.

The Government considers that the changes introduced by the Building Act 1993 and the Building Regulations 1994 have placed the building industry, and in particular the building control functions, in a leading position both nationally and internationally. However this does not mean that further improvements cannot be achieved. The reforms have made building practitioners more accountable. The combination of review, auditing and compulsory insurance have provided building owners and occupiers with improved levels of certainty in the safety of buildings.

4.3 VICTORIA REVIEW – PROCESS

Freehills Regulatory Group (FRG) was appointed by the Department of Infrastructure to undertake the National Competition Policy Review of the Architects Act 1991, the Architects Regulations 1993, the Building Act 1993 and the Building Regulations 1994.

The review was supported by a reference group comprising representatives with appropriate knowledge and experience from DOI, the Architects Registration Board of Victoria, the Building (Control) Commission, the Department of Premier and Cabinet, the Plumbing Industry Board and the Office of Fair Trading and Business Affairs.

The Minister for Planning released the FRG report for public comment so that the comments received could be considered with the recommendations of the Productivity Commission review and the Auditor-General's performance audit of the Building (Control) Commission (BC) before preparing an implementation strategy. Public comment was received by the Department of Infrastructure (DOI) in September 2000.

In January 2001 the Minister for Planning approved the transfer of responsibility from the Department of Infrastructure to the Building (Control) Commission for:

- formulating and executing an implementation strategy for the National Competition Policy (NCP) review of Victoria Architects and Building Legislation, and
- formulating a response to the Productivity Commission's National Review of Architectural legislation

5.0 VICTORIA REVIEW OF ARCHITECTS AND BUILDING LEGISLATION

5.1 SUMMARY OF FREEHILLS REGULATORY GROUP FINDINGS

The review consists of two distinct parts. The Part A element involves the review of the Architects Act 1991 and the Architects Regulations 1993, and the Part B element involves the Building Act 1993 and the Building Regulations 1994. Part 12A of the Building Act 1993, which deals with regulation of plumbing work, was excluded from the scope of the review as it had already been assessed as complying with NCP. The Building Code of Australia was also excluded from the review.

Freehills Regulatory Group (FRG) found that several provisions in the above legislation operate as restrictions on competition and some of these provisions warrant amendment. In many other instances, however, FRG held that the provision may raise costs to business but nevertheless provides net benefits to the community. FRG's findings are summarised below. The Government Response is indicated in sections 5.2 to 5.4.

In respect of the architects legislation, a primary consideration is whether the title restrictions and registration provisions achieve net benefits for the community. FRG held "that they do and subject to our finding on the potential benefits of integration with the Building Legislation, we could not find an alternative mechanism that would clearly achieve higher net benefits" (FRG Executive Summary).

The review of the building legislation gave rise to several issues. FRG found that where the registration levels for a building practitioner category or class is high, the title restrictions, registration requirements and compulsory insurance requirements are likely to provide net benefits. However, for categories where registration levels are low, FRG found it was not clear that the provisions provide net benefits. FRG stated that "given the relatively recent reform of the legislation, we take the view that it was premature to repeal the provisions. It appears that insufficient time has elapsed to ensure adequate levels of compliance with the title constraints and registration requirements." Instead, FRG recommended that the provisions be amended with a view to clarifying their meaning and to increasing levels of registration. Further, FRG recommended that a review of registrations levels should be undertaken at regular intervals to assess whether it is appropriate to retain registration requirements for any or all categories. Increased audits of building surveyors were also recommended to enhance the benefits of the building permit system.

FRG did not find that the building permit levy, the registration fees or other charges amount to restrictions on competition. FRG expressed views about the building administration fund, a building permit levy formula and about separate disclosure of the revenues and expenses of the Building Commission (BC), Building Practitioners Board (BPB), Building Advisory Council (BAC) and the Building Regulations Advisory Committee (BRAC) which have generally been noted for future consideration.

FRG recommended that consideration be given to undertaking a further review of the structure, function and performance of the regulatory bodies to procure greater benefits from the administration of the legislation.

The terms of reference required consideration of the case for integrating the architects legislation with the building legislation. FRG adopted the view that there are potential benefits to be derived from such integration, such as administrative cost savings, streamlined legislation and common application of construction industry policy to all relevant occupational groups. FRG were of a view that the experience and effectiveness of the ARBV suggests that amalgamation of the ARBV and the BPB could facilitate improved regulation of the building legislation. FRG advised that if integration was to proceed, an appropriate transition period would further enhance the available benefits.

The FRG recommendations and views on the Architects and Building Legislation are summarised in the table below. The Government Response is not included in this table.

Table 2. Competition Restrictions and Consultant’s Recommendations

Provision of Architects Legislation

Clause	Provision of Architects Legislation	FRG Finding
4.4	Constraints on use of the title “architect” to registered architects (Sections 4,5 and 6).	Subject to our discussion on integration of the Architects and Building Legislation, we recommend retaining title restriction and registration requirements for architects.
4.5	Control on the ownership of organizations using the title “architect” and its derivatives (Sections 13 and 14).	We recommend that the ownership provisions be amended to ensure that in firms which use the title “architect”, or hold themselves out as offering architectural services, at least one director or partner is a qualified/practising architect.
4.6	Constraints on acting as developer and architect on same project (Regulation 8), on using the title “architect” when carrying on the business of developer (Regulation 9), and on advertising as an architect when acting for a developer (Regulation 12).	We recommend Regulations 8, 9 and 12 should be repealed and Regulation 10 be amended to require an architect, acting as both developer and architect, give the client notice in writing of the scope of his or her different roles. Apart from Regulation 5, 6, 7 and 10, generic laws governing misleading and deceptive conduct may also be relied upon. This will achieve a higher net benefit than the existing provision.
4.7	Prohibition on architects endorsing, for profit, a specific building material, component, service or product (Regulation 13).	In our view, Regulation 13 imposes costs without achieving benefits over and above those achieved by Regulations 5, 6, 7, 10 and 14. We recommend the repeal of Regulation 13 and reliance on Regulations 5, 6, 7, 10 and 14 to achieve higher net benefits.
4.8	Constraints on accepting financial advantages from suppliers, contractors and tradespeople of the project, except as a client (Regulation 15).	We recommend that Regulation 15 be repealed and Regulations 5, 6, 7, 10 and 14 be relied on. This offers a higher net benefit as it achieves similar benefits using less interventionist and hence less costly prescriptions.

4.9	Exemptions for public sector employed architects (Section 7).	Our recommendation is to repeal these exemption provisions to ensure that all architects, including private and public sector employees, are treated equally by the provisions.
4.10	Constraints on seeking business from clients of other architects (Regulation 19)	Our recommendation is to repeal this provision because contract law provides adequate redress for an architect in the event of breach by a client.
4.11	Other provisions	For various reasons we do not recommend amendment to these provisions.

Provision of Building Legislation

Clause	Provision of Building Legislation	FRG Finding
6.4	Title constraints and registration of building practitioners (Sections 169, 172 and 176).	<p>To improve monitoring and enforcement, we recommend that companies and partnerships be subject to the registration requirements.</p> <p>To avoid eroding the meaning of the building practitioner titles and to further address the objectives of the Legislation, Section 176 should be clarified to provide that all practitioners, whether sole practitioners or employed by companies or partnerships, are required to register. However, relevant orders should exempt building practitioner employees of adequately insured companies and partnerships.</p> <p>In our view, registration levels and compliance levels should be reported by the BPB and should be one of the BPB's key performance indicators. We recommend regular review of the registration categories and classes to assess and report on the ongoing need for these categories. If new categories or classes of Building Practitioner are to be added, an appropriate Regulatory Impact Statement should be prepared.</p>
6.5	Compulsory insurance provisions (Part 9, Division 3)	We recommend retention of the Minister's power to issue compulsory insurance orders. We take the view that when deciding to issue or revoke such orders, a competition analysis and cost-benefit assessment should be undertaken to assess the case for the relevant order.

6.6	Building permit requirement (Part 3) and occupancy permit requirement (Section 39).	<p>We recommend increased use of audits of building surveyors to ensure that standards are maintained and fostered.</p> <p>We recommend that consideration be given to conducting a study into the case for integration of aspects of the planning permit application process and the building permit provisions.</p>
6.7	Exemptions for public sector employees and the Crown (Section 176(5)(a)).	<p>We recommend repeal of the provisions which grant exemptions to public sector employees, public authorities and the Crown. However, of these provisions, we recommend retention of those which exempt certain high security Crown buildings from the requirement to lodge permit documents with the relevant council.</p>
6.8	Building permit levy and the building administration fund (Sections 200 and 201).	<p>It is our view that the levy should be based on a formula which is cost-reflective and includes incentives for cost-effective administration of the legislation.</p> <p>One method by which to ensure adequate resources are available to allow enforcement of registration provisions, is to amend the provisions constituting the building administration fund to specify that registration fees are paid to the BPB to cover the cost of regulating building practitioners and administering the registration system. In this way, registration fees can be set at a cost reflective level and the BPB has incentives to realise operational efficiencies.</p> <p>To further enhance regulatory efficiency, we recommend that the regulatory bodies develop Key Performance Indicators (KPIs) and provide greater disclosure.</p> <p>A review of the structure, function, and performance of the regulatory bodies could further enhance benefits.</p>
6.9	Other provisions	<p>For various reasons we do not recommend amendment to these provisions.</p>
7	Integration of the Architects Legislation and the Building Legislation	<p>We find that there are potential net benefits to be obtained from integration of the Architects Legislation and the Building Legislation. We take the view that integration, subject to any appropriate transition period, should procure administrative cost savings and should allow consistent application of construction industry policy to all participants.</p> <p>The experience and apparent effectiveness of the ARBV should assist an amalgamated ARBV and BPB to achieve higher levels of compliance with the</p>

		Building Legislation.
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5.2 PROVISION OF ARCHITECTS LEGISLATION

This section outlines the FRG Findings and Recommendations, discusses the issues raised and provides the Government response and proposed action.

5.2.1 FRG 4.4 - Constraints on use of the title “architect” to registered architects

FRG Recommendation - Subject to our discussion on integration of the Architects and Building Legislation, we recommend retaining title restriction and registration requirements for architects.

Discussion

This issue is also addressed in the draft Inter-Governmental Working Group Response to the Productivity Commission’s Review refer section 6.4.3 below: **Principle 3 - Restriction on Title**.

The recommendation to retain title controls for registered architects is consistent with the related provisions under the Building Act 1993.

Government Response and Action

The above recommendation is accepted to retain the existing protection of the title "architect", but remove the broad restriction on the use of the terms "architectural" and "architecture" and including reference to specific restricted terms consistent with the Queensland Architects Act 2002. These changes will be supported by enhancement of existing offences relating to "holding out".

5.2.2 FRG 4.5 - Control on the ownership of organizations using the title “architect” and its derivatives

FRG Recommendation - We recommend that the ownership provisions be amended to ensure that in firms which use the title “architect”, or hold themselves out as offering architectural services, at least one director or partner is a qualified/practising architect

Discussion

This issue is also addressed in the draft Inter-Governmental Working Group Response to the Productivity Commission’s Review refer sections below: **6.4.3 Principle 3 Restriction on Title; 6.4.4 Principle 4 Registration; 6.4.5 Finding 10.9 Ownership Restrictions**.

The recommended amendments are consistent with the related provisions under the Building Act 1993.

Government Response and Action

The above recommendation is accepted and a legislation change is proposed.

5.3 PROVISION OF ARCHITECTS REGULATIONS

FRG made a series of recommendations and observations regarding the Architects Regulations 1993. It recommended the repeal or modification to those regulations that restrict competition as detailed below. The Government accepts the FRG recommendations. Although the Architects Regulations sunset on 25 May 2004 the changes are proposed to be carried out concurrently with legislative changes and incorporated into the new 2004 Regulations. The Government reserves the option of undertaking a review of the balance of the regulations that were not the subject of FRG recommendations.

5.3.1 Recommendation 1- Constraints regarding Developer

FRG 4.6 - Constraints on acting as developer and architect on same project (Regulation 8), on using the title “architect” when carrying on the business of developer (Regulation 9), and on advertising as an architect when acting for a developer (Regulation 12).

***FRG Recommendation** - We recommend Regulations 8, 9 and 12 should be repealed and Regulation 10 be amended to require an architect, acting as both developer and architect, give the client notice in writing of the scope of his or her different roles. Apart from Regulation 5, 6, 7 and 10, generic laws governing misleading and deceptive conduct may also be relied upon. This will achieve a higher net benefit than the existing provision*

Discussion

In reviewing Regulations 8, *Acting in Multiple Capacities*; 9, *Restrictions on other businesses*; 10, *Telling the client about a conflict of interest*; 12, *Acting for a Developer*, FRG concluded that while “existing regulations would appear to protect a client against the risks” addressed by those regulations, costs are decreased and benefits maintained by relying on Regulations 5, 6, 7 and an expanded 10. The expansion to Regulation 10 proposed by FRG was to require disclosure in writing before acting in multiple capacities. FRG concluded that such disclosure should address situations where an architect was providing professional advice to a consumer or acting as their agent, independent advice as an adjudicator and development or construction services as a contractor.

Government Response and Action

The Government accepts the recommendation that Regulations 8, 9 and 12 be repealed and Regulation 10 be expanded to address the “harm envisaged” in those regulations.

5.3.2 Recommendation 2 Prohibition on Endorsements

FRG 4.7 - Prohibition on architects endorsing, for profit, a specific building material, component, service or product (Regulation 13)

***FRG Recommendation** – In our view, Regulation 13 imposes costs without achieving benefits over and above those achieved by Regulations 5, 6, 7, 10 and 14. We recommend the repeal of Regulation 13 and reliance on Regulations 5, 6, 7, 10 and 14 to achieve higher net benefits.*

Discussion

FRG recommended the repeal of Regulation 13, *Endorsement by Architects*, on the basis that this regulation imposes costs without achieving benefits over and above those achieved by regulations 5,6,7,10 and 14.

Government Response and Action

The Government accepts the recommendation that Regulation 13 be repealed.

5.3.3 Recommendation 3 - Constraints on Financial

FRG 4.8 - Constraints on accepting financial advantages from suppliers, contractors and tradespeople of the project, except as a client (Regulation 15)

FRG Recommendation - We recommend that Regulation 15 be repealed and Regulations 5, 6, 7, 10 and 14 be relied on. This offers a higher net benefit as it achieves similar benefits using less interventionist and hence less costly prescriptions.

Discussion

FRG recommended the repeal of Regulation 15, *Financial Advantage*, and rely on 5, 6, 7, 10, 14 as they achieve similar benefits.

Government Response and Action

The Government accepts the recommendation that Regulation 15 be repealed.

5.3.4 Recommendation 4 - Public Sector Employees

FRG 4.9 - Exemptions for public sector employed architects (Section 7 (1))

FRG Recommendation - Our recommendation is to repeal these exemption provisions to ensure that all architects, including private and public sector employees, are treated equally by the provisions.

Discussion

FRG recommended that Section 7 (1), *Exceptions*, of the Act, be repealed to ensure that public sector employees are treated equally to private sector architects. FRG's recommendation is based on the premise that the exemption "conflicts with principles of competitive neutrality which mandate that public sector enterprise should not be given advantages merely by virtue of their government ownership"

At the time that FRG undertook the NCP Review the Government owned a business enterprise, Building Services Agency (BSA), that provided architectural services to the public sector. It frequently competed with the private sector for such work and was therefore open to the conclusion that competitive neutrality principles were not being satisfied. This was the only Government business enterprise that provided architectural services in competition with the private sector.

The BSA was purchased from Government by a private sector organisation in mid 1999 some while after the FRG Final Report date of February 1999. The issue of competitive neutrality in the context of architectural services has thereby been removed.

Government Response and Action

The Government does not accept the recommendation that Section 7 (1), *Exceptions*, of the Act, be repealed as the basis for the FRG recommendation of a competitive neutrality issue, has been removed.

The related issue of exception for public sector employees under the Building Act using Building Practitioner titles is addressed in section 5.4.4 below.

5.3.5 Recommendation 5 - constraint on Seeking Business

FRG 4.10 - Constraints on seeking business from clients of other architects (Regulation 19)

FRG Recommendation - Our recommendation is to repeal this provision because contract law provides adequate redress for an architect in the event of breach by a client.

Discussion

FRG recommended the repeal of Regulation 19, *Replacing an Architect*, as it inhibited competition between architects proposing in its place reliance on contract law.

Government Response and Action

The Government accepts the recommendation that Regulation 19 be repealed.

5.3.6 Recommendation 6 - Other Provisions

FRG 4.11 - Other provisions

FRG Recommendation - For various reasons we do not recommend amendment to these provisions.

Discussion

This recommendation refers to a series of provisions including:

- Regulations 5, 6, 7 and 10 general standards of professional conduct
- Regulation 12 architect engagement by a developer
- Regulation 16 information contained in advertisements
- Regulation 17 disclosure on letterheads
- Regulation 18 supply of terms and conditions to the client

FRG indicated that these regulations generally did not amount to a restriction on competition but observed that there was no apparent need for some of them. The relevant Victorian organisations representing architects, the Architects Registration Board of Victoria (ARBV), the Victorian Chapter of the Royal Australian Institute of Architects (RAIA) and the

Association of Consulting Architects - Victoria (ACA), were consulted on the need for continuing retention of the above regulations. Most of the above regulations were supported for retention except Regulation 16, which was proposed for repeal and Regulation 17, which is proposed to be reviewed to reflect current communication methods.

Government Response and Action

The Government accepts the FRG recommendation for retaining the regulations listed above but will repeal Regulation 16. No action is proposed in regard to the balance of the regulations except Regulation 17, which will be reviewed to reflect current communication methods.

5.3.7 Recommendation 7 - Professional Conduct Standards

Discussion

PC 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).”*

The PC promoted the simplification of professional conduct standards as current standards were seen as “too prescriptive, consistency between jurisdictions is less likely to be achieved”.

As the PC made specific reference to the Victorian Building Act (and associated Regulations) as a model for standards of professional conduct the Government has accepted the same wording should be in the Architects Act. Building Regulation 15.2 (a) is identical to Architect Regulation 5 and 15.2 (b) and 15.2 (c) are essentially the same as in the current Architect Regulations 10 and 14.

The Building Regulations 1994 clause 15.2 Professional Standards states:

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.

Although the wording differences, for Regulations 10 and 14, are minor and the requirements essentially the same the alignment of both sets of regulations is supported.

Government Response and Action

The Government will replace the words in the Architects Regulations 10 and 14 with those from Regulation 15.2 of the Building Regulations 1994.

5.4 PROVISION OF BUILDING LEGISLATION

5.4.1 Recommendation 6.4 - Title constraints and registration of building practitioners (Sections 169, 172 and 176)

FRG Recommendation – (a) To improve monitoring and enforcement, we recommend that companies and partnerships be subject to the registration requirements.

(b) To avoid eroding the meaning of the building practitioner titles and to further address the objectives of the Legislation, Section 176 should be clarified to provide that all practitioners, whether sole practitioners or employed by companies or partnerships, are required to register. However, relevant orders should exempt building practitioner employees of adequately insured companies and partnerships.

(c) In our view, registration levels and compliance levels should be reported by the BPB and should be one of the BPB's key performance indicators. We recommend regular review of the registration categories and classes to assess and report on the ongoing need for these categories. If new categories or classes of Building Practitioner are to be added, an appropriate Regulatory Impact Statement should be prepared.

Discussion

(a) The issue of registration of building practitioner companies and partnerships is proposed by FRG to improve monitoring and enforcement. Currently only natural persons can be registered as building practitioners. A company is a legal person but is not a natural person.

The Productivity Commission's (PC) principle 4, refer 6.4.4, in regard to architects legislation states "that only principals (natural persons not companies) to contracts be required to be registered". The adoption of the part of this principle relating to company registration could lead to the repeal of the requirement for registration of architectural companies from the current architects legislation. This is the opposite of the FRG recommendation for the building legislation to add such a provision.

Initial consideration of the issue by the BC has resulted in a view, sympathetic to that of the FRG recommendation, that mandatory recording and monitoring of companies/ partnerships providing services related to a category of building practitioner was required with registration possibly being the only feasible solution. Any resolution would need to improve the practitioner registration and insurance system that Victoria has developed and provide a net benefit to the public.

In the light of the conflicting views of the FRG and PC Reviews, the Government proposes to undertake a more comprehensive review of the issue and in the interim proposes that the building and architects legislation in relation to this issue should not be amended except in regard to architects legislation to implement actions identified in sections 6.4.4 and 6.4.5 of this Response.

(b) As above, FRG have recommended an increase in regulation to require the registration of all practitioners whether sole practitioners or employed by companies or partnerships. FRG propose that insurance, where a company or partnership, provide insurance employees should be exempt. FRG 6.4, concluded that "Net community benefits appear to be produced by the registration provisions where registration levels are high." This appears to be based on

the argument that “By promoting training, skill and experience through registration, standards of construction, amenity and safety are supported and elevated.”

(c) FRG expresses a view on additional Building Practitioner Board’s key performance indicators and the regular review of the registration categories and classes. The BC Corporate Plan “Building the Future 2001 – 2006” includes Performance Indicators for each of the eight strategies adopted. Strategy Five is Continuous Practitioner Improvement and aims to improve practitioners by market forces, professional development and compliance. FRG express a view that a Regulatory Impact Statement should be prepared where new categories of Building Practitioner are contemplated. This process is frequently adopted and the principle is supported .

Government Response and Action

(a) The Government proposes to, rather than increase regulation at this time in accordance with the FRG recommendation, undertake a more comprehensive review of the issue and determine whether a net public benefit will result by the adoption of the registration of companies and partnerships. In the interim the architects and building legislation is not proposed to be amended in respect to company or partnership approval or registration.

(b) The merits of increasing regulation by the registration of employees requires further examination to establish whether the benefits anticipated will be achieved. No increase in regulation is proposed in the medium term on this issue.

(c) The main Government initiative in the area of practitioner improvement is the BC Corporate Plan that includes a series of performance indicators. The FRG view that a Regulatory Impact Statement should be prepared where new categories of Building Practitioner are contemplated is supported, except for the category of “architect” which is an outcome of the competition policy reviews.

5.4.2 Recommendation 6.5 - Compulsory insurance provisions (Part 9, Division 3)

FRG Recommendation - We recommend retention of the Minister’s power to issue compulsory insurance orders. We take the view that when deciding to issue or revoke such orders, a competition analysis and cost-benefit assessment should be undertaken to assess the case for the relevant order.

Discussion

The FRG Review recommends the retention of the existing mechanism of issuing compulsory insurance orders. Prior to determining that any part of the insurance orders are to be modified a detailed analysis and assessment process is employed.

Government Response and Action

The Government agrees with the FRG recommendation to retain the Minister’s power to issue compulsory insurance orders and supports the FRG view on the analysis and assessment processes that should be undertaken.

5.4.3 Recommendation 6.6 - Building permit requirement (Part 3) and occupancy permit requirement (Section 39).

FRG Recommendation – (a) We recommend increased use of audits of building surveyors to ensure that standards are maintained and fostered.

(b) We recommend that consideration be given to conducting a study into the case for integration of aspects of the planning permit application process and the building permit provisions.

Discussion

(a) The Government through its Building (Control) Commission has set a base standard of competency through registration of Building Surveyors. It carries out performance audits of Building Surveyors and aims to audit each on a 3 year rotation basis.

It also plans to introduce voluntary continuing professional development to improve the standards or registration and stronger enforcement actions against poor performers. The Building Practitioner system includes the investigation of any complaints in relation to Building Surveyor performance. This process includes a review of actions taken leading, where appropriate, to enforcement processes where competency or conduct has not met the Building Act requirements.

(b) Victoria has been progressively developing greater consistency and integration in its planning and building systems. In 2000, the Building Act 1993 was amended to require a building surveyor to be satisfied in relation to a building permit application that a planning permit has been obtained and a building permit will be consistent with that planning permit. Another example is the recently developed ResCode that is the culmination of a major review. ResCode is a set of provisions in planning schemes and the building regulations that affect the development of one or more houses and residential subdivisions. To provide consistency with the implementation of the ResCode provisions in both the planning and building systems, new regulations have been made and legislation developed.

Government Response and Action

(a) The Government agrees with the aim of maintaining and fostering the competency standards of building surveyors. It is progressively raising the standards of all building practitioners including building surveyors and its performance audit processes contribute to this aim.

(b) The Government supports the principle of aiming for greater integration of its planning and building systems and has implemented reforms in support of that direction.

5.4.4 Recommendation 6.7 - Exemptions for public sector employees and the Crown (Section 176(5)(a)).

FRG Recommendation - We recommend repeal of the provisions which grant exemptions to public sector employees, public authorities and the Crown. However, of these provisions, we recommend retention of those which exempt certain high security Crown buildings from the requirement to lodge permit documents with the relevant council.

Discussion

FRG (6.7) state that “it is our view that the provisions place some practitioners and Government businesses at a competitive advantage to private practitioners” and competitive neutrality principles are thereby not maintained.

FRG notes that:

- a) in regard to certain public sector employees they are exempted from the registration offences section (Building Act Section 176(5))
- b) the Crown and public authorities are not bound to Part 8 of the Building Act which governs enforcement of safety and building standards
- c) the Crown and public authorities are not liable for offences and to pay fees other than the building permit levy.

Each of the above sections a), b) and c) are discussed below.

a) The investigation and application of a penalty where a public sector employee has committed an offence is provided for by other legislation. Public sector employees are subject to the Public Sector Management and Employment Act 1998 administered by the Office of Public Employment. This act establishes a Code of Conduct applicable throughout the public sector. For example the appropriate Agency Head may terminate the employment if the employee is guilty of serious misconduct or if the employee is inefficient or incompetent in the discharge of his or her duties. For public sector employees to also be subject to the conduct provisions of the Building Act would create administrative duplication and confusion. The competitive neutrality issue of exemption “from the registration offences” is balanced by alternative legislation provisions.

b) The Government has elected to use provisions other than Part 8 to address the standards of public buildings. The Building Act Section 220 provides for the Minister for Finance (MFF) to issue guidelines in relation to Crown and publicly owned buildings. Guidelines were issued in 1994 under this section entitled “Standards for Publicly Owned Buildings.” These standards place obligations on those responsible for existing public buildings to bring them to a standard that they are safe and fit to occupy and keep them in a serviceable condition. The MFF Guidelines place additional obligations on the public sector to annually report to Parliament on a range of issues including building inspection mechanisms.

c) FRG refer to Building Act Sections 218(4) and 218(5). The reference should be to Sections 217(4) liability for any offence and 217(5) liability to pay any fee or charge. Section 218 was repealed in 1997. The whole of the relevant sections are:

Building Act Section 217(4) Nothing in sub-sections (1) to (3) makes the Crown or a public authority liable for any offence under this Act or the regulations.

Building Act Section 217(5) Nothing in sub-sections (1) to (3) makes the Crown liable to pay any fee or charge except the building permit levy and the fees payable under Part 10.

In regard to Section 217(4) the effect of the removal of this exemption would be that the Crown may be required to find itself liable in relation to an offence and in regard to Section 217(5) the effect of the removal of this exemption would be that the Crown would be paying

itself for offences. These provisions are normal in Acts such as the Building Act and are not considered to present a competitive neutrality issue.

Government Response and Action

The Government has progressively removed exemption provisions in the Building Act in respect of the Crown. The remaining Crown exemptions are relatively minor and reflect the specific functions of the public sector. Recent amendments include the Crown and public authorities now being required to:

- Obtain building permits
- Pay the building levy and
- Comply with the Essential Services requirements

The response is provided in relation to the 3 parts of the recommendation identified above and by FRG.

- a) **Public sector employees exemption**
The government does not propose to repeal Building Act Section 176(5) as public sector employees are subject to the conduct requirements and disciplinary processes of the Public Sector Management and Employment Act 1998.
- b) **Building Act Part 8 Enforcement of Safety and Building Standards**
The government does not propose to repeal Part 8 of the Building Act as alternative processes are in place, as contained in the Minister of Finance Standards for Publicly Owned Buildings, which govern the enforcement of safety and building standards.
- c) **Crown liability for offences and payments**
The government does not propose to repeal Section 217(4) liability for offences and Section 217(5) liability to pay fees of the Building Act.

5.4.5 Recommendation 6.8 - Building permit levy and the building administration fund (Sections 200 and 201).

- FRG Recommendation** –(a) It is our view that the levy should be based on a formula which is cost-reflective and includes incentives for cost-effective administration of the legislation.*
- (b) One method by which to ensure adequate resources are available to allow enforcement of registration provisions, is to amend the provisions constituting the building administration fund to specify that registration fees are paid to the BPB to cover the cost of regulating building practitioners and administering the registration system. In this way, registration fees can be set at a cost reflective level and the BPB has incentives to realise operational efficiencies.*
- (c) To further enhance regulatory efficiency, we recommend that the regulatory bodies develop Key Performance Indicators (KPIs) and provide greater disclosure.*
- (d) A review of the structure, function, and performance of the regulatory bodies could further enhance benefits.*

Discussion

- (a) The FRG view is to introduce a more complex system of basing the levy on a cost reflective formula with incentives. A complete review of the Building (Control) Commission

was undertaken by the Victorian Auditor-General's Office. The report of May 2000, is entitled "Building Control in Victoria – Setting sound foundations"; Auditor-General Performance Audit Report No 64 (Auditor Generals Performance Review). This report concluded, section 2.16, that "the cost of operating the BC and the other statutory bodies from 1 July 1994 to 30 June 1999 has increased at approximately the same rate as total revenue."

The Auditor General's report validates the formula used to calculate the basic levy, as it has enabled the BC and other statutory bodies to keep abreast of the increasing demands of the building industry, at a time of unprecedented activity.

It should be recognised that there have been additional imposts to the levy in recent times. These are the HIH levy, which is .032 cents in every dollar of the cost of domestic building work, and the building permit levy (.064 cents in every dollar of the cost of building work), which is used to fund the dispute resolution service, the Building Advice and Conciliation Victoria (BACV). The Government has expressed its intention to remove the additional levy for the HIH rescue by no later than 2010.

The BC will give consideration to alternative mechanisms that aim to reduce the compliance burden and improve the affordability of domestic housing. However, the level and quality of services provided to the community and industry is of paramount concern. The costs and benefits of any change that could affect the BC's capability to respond to industry and community needs would need to be carefully considered.

(b) FRG suggests a method of administering registration fees in relation to the Building Practitioners Board. As part of the Auditor Generals Performance Review a more comprehensive review of the Building Practitioner operations and effectiveness was undertaken. The findings of that review provide a greater depth of analysis and are preferred as the basis for operational changes.

(c) The Building (Control) Commission has undertaken a major strategic review with an aim of achieving better outcomes for the building industry and its stakeholders. The BC Corporate Plan "Building the Future 2001 – 2006" includes Performance Indicators for each of the eight strategies adopted. One of the strategies specifically addresses improvements in informing the marketplace and consumers.

(d) As indicated in (a) above a complete review of the Building (Control) Commission was undertaken by the Victorian Auditor-General's Office with the Auditor Generals Report being completed in May 2000. This performance audit has resulted in the implementation of improvements to the regulatory system in Victoria.

Government Response and Action

(a) The Government does not agree with the FRG view that a more elaborate system of determining the levy will lead to overall operational and financial improvements.

(b) The Government notes the FRG suggestion but will use the findings of the Auditor-Generals Performance Audit Report No 64, May 2000, as the preferred basis for operational changes

(c) The Government accepts the recommendation, which it has met by the development of the BC Corporate Plan “Building the Future 2001 – 2006”

(d) The Government accepts the recommendation and has carried out a major performance review in the form of the Auditor-General Performance Audit Report No 64, May 2000.

5.4.6 Recommendation 6.9 - Other provisions

***FRG Recommendation** - For various reasons we do not recommend amendment to these provisions.*

This recommendation refers to a series of provisions including:

- Owner-builder limitations
- Essential services requirements
- Accreditation of building products
- Minister’s powers to issue Guidelines
- Time constraints applying to building work
- Regulation of places of public entertainment and temporary structures

Discussion

FRG concluded “that the benefits of these provisions outweigh the costs, and that there are no higher net benefit alternatives”

Government Response and Action

The Government accepts the recommendation that the above provisions do not require amendment. No action is proposed arising from the FRG Review.

The Auditor-General Performance Audit Report No 64, May 2000 has separately addressed the role of the BC as building surveyor as well as regulator regarding places of public entertainment. Legislative changes to reduce the BC’s role as building surveyor are planned.

5.4.7 Recommendation 7.5 - Integration of the Architects Legislation and the Building Legislation

***FRG Recommendation** – (a) We find that there are potential net benefits to be obtained from integration of the Architects Legislation and the Building Legislation. We take the view that integration, subject to any appropriate transition period, should procure administrative cost savings and should allow consistent application of construction industry policy to all participants.*

(b) The experience and apparent effectiveness of the ARBV should assist an amalgamated ARBV and BPB to achieve higher levels of compliance with the Building Legislation.

Discussion

(a) The IGWG Response, to the PC’s Review, noted: “The Review’s alternative approach recommends the adjustment of existing legislation to remove elements deemed to be anti-competitive, and not in the public interest.

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 Productivity Commission's views."

The view of the BC/ARBV Working Party was that the Competition Review should focus on anti-competitive elements within the Architects Act and Regulations. The issue of retaining an independent Architects Act or its integration into the Building Act was not considered to be in itself an anti-competitive element. To achieve greater alignment in the architectural and building legislation, architects that use Building Practitioner titles are to be required to have insurance consistent with the Building Act.

Further it is proposed that the ARBV take up responsibility for the registration of architects wishing to be building practitioners. It is intended that the ARBV also be responsible for recording that adequate insurance cover has been obtained by architects wishing to be building practitioners in accordance with the Minister's insurance orders.

(b) The proposal to encourage communication between the ARBV and the BPB is supported by both Boards.

A representative of architect building practitioners is proposed to be added to the Building Practitioners Board. This is addressed in section 6.4.1.4. To encourage communication flow in both directions the BC/ARBV Working Party recommended that a member drawn from those representing equivalent consultant categories of the BPB, become the "related professions" representative on the ARBV. This issue and related recommendations is discussed further in section **6.4.1.3**.

Government Response and Action

a). The Government does not accept recommendation 7 (a) as the focus of reform should be on the anti-competitive elements within Acts. The expectation of greater benefits from national consistency are supported in the anticipation that each State will retain a separate Architects Act. Improved alignment in the Victorian architectural and building legislation is proposed by requiring architects who are building practitioners to have insurance consistent with the Building Act and making the ARBV responsible for related registration processes.

b). The Government accepts recommendation 7 (b) as it proposes to provide for a member of the ARBV to be a member of the BPB Board. This issue is addressed further in section **6.4.1.4**.

6.0 NATIONAL REVIEW ARCHITECTS LEGISLATION – SCOPE OF THE REVIEW

6.1 NATIONAL REVIEW – PROCESS

In November 1999 the Assistant Treasurer, Commonwealth Government, requested the Productivity Commission to conduct a national review of legislation regulating architects, “on behalf of all States and Territories except Victoria which has completed its review”.

In August 2000 the Productivity Commission (PC) completed its *Review of Legislation Regulating the Architectural Profession*. The Commonwealth Government released the inquiry report on 16 November 2000.

As Victoria had undertaken a Competition Policy Review of its Architects Legislation it was not formally part of the PC’s Acts under review. The PC made two recommendations with its preferred approach being to repeal all Architects Acts. Its alternative recommendation being the adoption of a set of 6 principles for States, like Victoria, that require registration of Building Practitioners.

The recommendation of the Productivity Commission Review of Legislation Regulating the Architectural Profession was:

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).*

6.2 NATIONAL REVIEW ARCHITECTS LEGISLATION, INTER-GOVERNMENTAL WORKING GROUP

In September 2000 the NSW Premier invited the Premiers and Chief Ministers to participate in an Inter-Governmental Working Group with an aim of achieving greater regulatory consistency between jurisdictions and providing advice to the Council of Australian Governments (COAG). The Commissioner, Building (Control) Commission (BC) was nominated as Victoria's representative. The Building (Control) Commission is linked to the Department of Infrastructure being the Department responsible for regulating the architectural profession.

The Inter-Governmental Working Group (IGWG) developed a Response to the Productivity Commission's "Alternative Recommendation" that would allow each jurisdiction to determine its own timetable and legislative approaches to implement the principles (refer Appendix A).

As indicated in the IGWG Response the view was supported that the focus of competition reform should be how legislation functions in each jurisdiction rather than on whether Architects Acts were separate or integrated into Building Acts. It is understood that other States intend to retain separate architect's legislation even those that, like Victoria, also have Building Acts. It is also understood that all other States intend to retain legislation that will provide for architects Boards and retention of title control.

In the development its response the Working Group supported the Productivity Commission'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 the IGWG Response the PC's Preferred Approach (repeal of Architects Acts and creation of a non-statutory certification system) was not supported. The Alternative Recommendation, (registration principles for building practitioners) was supported as a suitable framework for development of a common approach.

The IGWG Response to the PC's Preferred Approach is summarised in the table below. The Government Response is not included in this table.

Table 3 Summary of the IGWP Response to the Alternative Recommendation principles

Restriction	Nature of Restriction	Productivity Commission Recommended Principle	IGWG Response
1	Balance of representation on architect's Boards	that architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation);	Boards to have industry and consumer representation

2	Practice restriction	that there be <u>no</u> restrictions on the practice of building design and architecture;	No restrictions on the practice of architecture
3	Title restriction and registration requirements	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;	Retention of title control over "architect" to avoid potential market confusion.
4	Ownership provisions	that only principals (persons, not companies) to contracts be required to be registered;	Architects to supervise and be responsible for services
5	Complaints and disciplinary proceedings	that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures; and	Complaints and disciplinary proceedings to be transparent and independent
6	Contestability of certification	that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration).	Registration to be achievable by combinations of qualifications and experience

6.3 NATIONAL REVIEW ARCHITECTS LEGISLATION

In general the FRG report's findings, where they review the same issue, are consistent with the PC's Alternative Recommendation principles. The FRG review findings, where they appear to be in conflict with a PC' Alternative Recommendation principle, are accepted as providing a more relevant response in the context of Victoria's legislation and regulations. They have been preferred in such areas as:

- The control over the title architect. The PC Principle 3 Restriction on Title is the relevant principle and is discussed in section 6.4.3.
- The FRG review supports the Building Act requirement that where services are provided in respect to a Building Practitioner category that either a director or partner of the organisation is registered in the relevant category. The PC Principle 4 *Registration*; Finding 10.9 *Ownership Restrictions* is the relevant principle and finding and is discussed in section 6.4.5.

In order to develop an implementation model based on the PC Review and the Freehill Review, the BC and the Architects Registration Board of Victoria (ARBV) formed a working party (BC/ARBV) to develop recommendations.

The Minister for Planning endorsed these recommendations as the basis of implementation consultation with the ARBV, Victorian Chapter of the Royal Australian Institute of Architects (RAIA) and the Association of Consulting Architects Victoria (ACA). The BC/ARBV was not able to consider the IGWG Response as it had not been released. However its recommendations are in accordance with that document.

The BC/ARBV considered the Freehills recommendation to migrate the Architects Act into the Building Act but formed a view that the functions and operation of the legislation are of greater importance in competition policy terms than the legislative mechanism that gives it effect. The BC/ARBV were, like IGWG, of the view that consistency with other States was of prime importance while recognising Victoria's system of Building Practitioner registration.

The BC/ARBV recommendations form the basis of the Government Response to the Architects legislation part of the NCP Review. These are incorporated into the detailed response below and are summarised as follows:

- Alignment of the existing Architect's legislation with the Victorian Building Act where appropriate
- Continuance of no restrictions on the practice of building design and architecture
- Retention of the ARBV as the Registration Board for architects
- Increase of industry and consumer representation, on the ARBV
- Representation on the Building Practitioners Board from the ARBV
- Reduction of the control on practice ownership to one Partner or Director consistent with the Building Act 1993
- Removal of the general restriction on the use of derivatives of "architect"
- Disciplinary procedures, conducted independent of the ARBV, which will continue to investigate and prosecute
- The introduction of alternatives to formal tribunal inquiry such as an informal inquiry
- Proposal for requirement for wider review of consumer complaints and disputes in relation to building practitioners
- Retention of contestability of certification that supports a broad range of qualifications and experience to be eligible for registration as an architect
- Recognition of 2 tiers of registration for qualified architects and those also with insurance
- Related amendments to the Act and deletion of a number of Regulations

6.4 PROVISION OF ARCHITECTS LEGISLATION

This section outlines the PC's Alternative Recommendation and the IGWG Response. It discusses the issues raised and provides the Government response to each principle and proposed action.

The Alternative Recommendation of the PC's Review of Legislation Regulating the Architectural Profession was:

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.

Each of the six principles is addressed below together with the Government's response and proposed action.

6.4.1 Principle 1 - Board Representation

PC principle – That architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation)

Discussion

Currently the Board has a membership of 8 (refer Appendix B) ie: 5 architects, 2 consumer representatives and 1 industry representative from a related profession. This representation meets the PC's general principle of broad representation. However the level of non-architect representation that the PC believed to be appropriate was revealed in the PC's Finding 10.3:

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

Each jurisdiction, through the IGWG process, has indicated that it will review its Board representation with most indicating that they will favourably consider the PC's Finding 10.3. In respect of the PC's Finding and the desire for greater national consistency, the Government has reviewed the membership of the Board and proposes the changes detailed below.

Attached in Appendix B is the current membership of the ARBV.

6.4.1.1 Architect Representation

Of the current Board membership the appointments that the Government proposes for retention are as identified in Part 6 of the Architects Act 1991 (refer Appendix B):

- (a) two representatives of consumer interests
- (b) one practicing senior government architect.
- (c) two architects nominated as prescribed
- (d) one schools of architecture representative
- (f) one nomination from the Royal Australian Institute of Architects

While the school of architecture representative and that of the RAI A are not required to be an architect in the legislation invariably this is so. These five members (b) to (f) are proposed to be retained as the representation of architects on the Board.

6.4.1.2 Consumer Representatives

Currently under (a) of the Act (refer 6.4.1.1 above) two representatives of consumer interests are to be nominated. There is no restriction on either of those consumer representatives being architects. To provide support to the PC's Finding 10.3, refer above, the potential for consumer representatives to be architects was proposed by the working party to be removed.

The working party discussed additional Board representation from industry to better reflect the consumers of the services of architects. Such additional representation could include building owners and builders. It was considered that commercial and industrial building owners are major consumers of architectural services in comparison to house owners and therefore an organisation representing those sectors should be considered such as the

Property Council of Australia. Builders are also consumers of architectural services in that they implement architect's design and construction documentation and interface in project and contract administration. Organisations such as Master Builders Association should be considered.

In summation it is proposed that the existing two consumer representatives be retained, two industry consumer representatives be added and that none of these can be registered architects.

6.4.1.3 Related Professions Representative

Currently under (e) of the Act (refer Appendix B) a representative is nominated from the four Institutions listed or from that of any other "related professions" as determined by the Minister.

The perspective that an industry representative brings to the Board is valued and reflects the PC's recommendation for "industry-wide" representation. The potential for a link to the Building Practitioners Board (BPB) by the "related professions" ARBV member being sourced from BPB members, of the same organisations as listed in the Architects legislation, was investigated. This proposal would have removed the Royal Australian Planning Institute as a potential source of nomination, as this organisation is not represented on the BPB, and removed the Minister's option to consider other "related professions". This proposal also presented procedural difficulties in the nomination of persons by the Minister to the Governor in Council sourced from a panel originated by the BPB and recommended to the Minister by the ARBV.

In consideration of the difficulties identified the proposal to source the "related industry" representative on the ARBV from the BPB is not recommended. However, it is proposed that additional industry representatives be added to the Board, to be nominated by the Minister after considering names submitted by relevant industry organisations.

6.4.1.4 ARBV representation on the Building Practitioners Board

While addressing the issue of ARBV membership, the membership of the Building Practitioners Board was also considered. An architect is proposed to be added to the BPB, as recommended in section 5.4.7, who is an architect member of the ARBV. This link would provide for improved communication between the ARBV and the BPB. This recommendation is a reflection of FRG's view to "bring (to a combined Board) the relevant technical knowledge and experience required to regulate architects".

6.4.1.5 Government Response and Action

Based on the above proposals the new Architects Board would be 10 members without a majority representation of architects. The Board would consist of 5 architects assuming the representative of the Schools of Architecture is an architect as has been recent practice. This modification to the membership achieves the PC's Principle of broad representation and also removes the majority position of architects on Boards substantially meeting the PC Finding of a preference for majority non-architects.

The Government proposes the following:

- That the Board retain the current membership as described in sections 47 (2) (a) (b), (c), (d), (e) and (f) of the current Architects Act (refer Appendix B).
- That the Architects Act be changed to preclude consumer representatives also being architects
- That 2 representatives of industry consumers, such as the Property Council of Australia and the Master Builders Association of Victoria, be added to the Board
- That for an architect building practitioner, to be added to the BPB, the nominated representative should be an architect member of the ARBV

6.4.2 Principle 2 - Restrictions on Practice

PC principle – That there be no restrictions on the practice of building design and architecture

Discussion

Currently in Victoria there are no restrictions on the practice of building design and architecture and the need for such under an Architects Act was not apparent to the BC/ARBV working party.

Government Response and Action

The Productivity Commission’s recommendation that there be no restrictions on practice is accepted. No legislative change is required.

6.4.3 Principle 3 - Restriction on Title

PC principle – 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

Discussion

The BC/ARBV working party noted the FRG recommendation 4.4 (e) that proposes “*retaining title restriction and registration requirements for architects*”. Refer **5.2.1** above. The working party supported the retention of title control over “architect” and “registered architect” and that architects must supervise and be responsible for architectural services. The working party also expressed a view that where the use of derivatives may potentially mislead the market as to the competency or qualification of the individual, some control should be maintained.

The Victorian Building Act 1993 approach in Section 176 (1) (c) and (d), places a restriction on persons holding themselves out as registered or qualified to practice as a building practitioner. This was understood to mean that the use of derivatives in relation to current categories of Building Practitioner such as “engineering services”, where it related to the building industry, was restricted to persons registered in the engineer category of building practitioner. Currently “architectural” and “architecture” are the two derivatives of “architect” contained in the Architects Act.

The Inter-Governmental Working Group (IGWG) was required in its Terms of Reference “to have particular regard to the desirability of achieving consistency across jurisdictions”. Advice from the representatives of Queensland and New South Wales on IGWG indicates that those jurisdictions intend to retain control, over certain derivatives of architect all of which are extensions of the word “architectural” such as “architectural design”.

The Architects Registration Board of Victoria has requested that “any wording in the Act must clearly regulate the use of derivatives”. The Building Commission supports this view, together with a “holding out” provision for flexibility, and on the basis of emerging consistency between jurisdictions. The removal of the general restriction on the use of derivatives of “architect” is proposed by removing “architecture” and “architectural” from the legislation and including restrictions on the specific terms of “architectural services, architectural design services and architectural design” consistent with the Queensland Architects Act 2002.

Government Response and Action

The Productivity Commission principle, in as far as it proposes no restriction on the generic title "architect", is not accepted, as it is considered that this would be likely to lead to consumer confusion. However, the principle is accepted in relation to the generally restrictive use of derivatives "architectural" and "architecture", as it is recognised that these restrictions may unnecessarily restrict ancillary industries. The title "architect" will continue to be protected and related specific terms included, in order to ensure adequate consumer protection and understanding, and the existing offences relating to "holding out" will be strengthened.

6.4.4 Principle 4 - Registration

PC principle – That only principals (persons, not companies) to contracts be required to be registered

Discussion

The working party noted the FRG recommendation 4.4 (e) that proposes “*retaining ...registration requirements for architects*” refer **5.2.1** above.

The FRG recommendation is considered to be a better reflection of the Victorian legislative approach. This is based on support for the registration of building practitioners as the foundation of a system that provides for the protection of consumers. FRG also observed in 4.5 (d) “*that generic laws and trade practices laws would not provide consumers with as high protection against this risk (of individuals circumventing the restrictions)*”

Currently architects who are registered with the ARBV who can use the titles “architect” or “registered architect” based on qualification and competency. Those who choose to use the additional title of “building practitioner” or “registered building practitioner” in association with “architect”, in accordance with section 176 (6) of the Building Act 1993, must also have insurance. This option has led to the creation of 2 principal tiers of architects namely those with insurance and those without.

For existing categories of building practitioner in the Building Act, recording the currency and compliance of insurance, in accordance with the Building Act, is carried out by the Building Practitioners Board. The Working Party proposed that the responsibility for recording the currency and compliance of insurance, in accordance with the Building Act, for architects be undertaken by the ARBV.

The proposed change would bring both tiers of architect under the ARBV's registration system who are in a better position to promote the understanding of the tiers to consumers.

The PC principle also includes a reference to companies indicating a view that companies should not be registered. This issue is addressed in 5.4.1 above.

Government Response and Action

The alternative FRG recommendation is accepted as also indicated in section 6.2.1. The Government proposes to amend the Architects and Building Acts and require the ARBV to ensure that practising architects have the required insurance.

The issue of company registration is addressed in 5.4.1 above.

6.4.5 Productivity Commission Finding 10.9 - Ownership Restrictions

PC 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”

Discussion

The working party noted the FRG recommendation 4.5 (e) *That the ownership provisions should be amended to ensure that in firms which use the title architect, or hold themselves out as offering architectural services, at least one director or partner should be a registered architect.*

FRG also observed 4.5 (d) that *“requiring at least one registered architect director or partner will not ensure that the work of an architectural partnership or company will be done by an architect. However it does provide some assurance that the architectural services provided by the organisation will be conducted or overseen by a registered architect.”*

The working party concluded that the FRG analysis was more appropriate for the Victorian legislative environment and supported alignment with the Building Act 1993. The Architects Act 1991 in Section 14 (f) currently requires “not less than two thirds of the directors” to be architects to achieve approval as an “architectural company” from the Board. The proposal represents a substantial change from the current Act but recognises the increasing number of multi-disciplinary practices developing in the market place.

Government Response and Action

The alternative FRG recommendation is accepted as also indicated in section 5.2.2. The Government proposes to modify the Architects Act 1991 in regard to the regulation of

specific words and the approval of architectural partnerships and companies to provide for the incorporation of relevant sections of the Building Act 1993. This will require at least one partner or director of a firm to be an “architect building practitioner”. The ARBV will be required to ensure individuals or companies/partnerships offering architectural services comply with title controls, “holding out” and insurance provisions.

6.4.6 Principle 5 - Consumer Complaints Procedures

PC principle – That there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures

Discussion

The PC’s Review in Finding 10.4 proposed that complaints and disciplinary provisions could be improved or modified. The IGWG Response has supported these improvements.

Finding 10.4 identified 8 areas of potential improvement that would have a varying degree of impact on each jurisdiction depending on their current arrangements. The areas are:

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

Government Response and Action

The ARBV has reformed the complaints and disciplinary provisions on a regular basis with most of the above areas implemented to an adequate level. The areas which require further consideration are items 2, 3 and 4 and are discussed below.

6.4.7 PC Finding 10.4.1 - Increasing the accessibility of complaints mechanisms

Discussion

The working party identified the desirability of employing mechanisms that efficiently dealt with complaints. An informal process for responding to simple matters was supported as a cost effective method to achieve satisfactory outcomes without incurring the additional cost of a formal hearing.

The working party believed that a wider review of systems of response to and processing complaints and disciplinary systems for building practitioners was warranted but recognised this would be beyond the time frame of the competition review.

Government Response and Action

The Government proposes that the processes for dealing with complaints be revised to allow for alternative resolution methods such as an informal inquiry. Improved clarity for consumers when seeking to lodge a complaint is proposed.

6.4.8 PC Finding 10.4.2 - Separating investigative and disciplinary functions

Discussion

Currently the Board can inquire into, or investigate, the fitness to practice or professional conduct of an architect. The Board must determine whether to inquire or not inquire into such matters. Having determined to inquire, the Board must constitute a Tribunal that carries out an inquiry function on its behalf. Where the Tribunal finds that there are grounds for disciplinary action against the architect it determines the action to be taken. A person may apply, or appeal, to an independent body being the Victorian Civil and Administrative Tribunal.

Due to the relatively small number of Tribunal members the working party supported the current process of the Board appointing the members of the Tribunal.

Government Response and Action

The current Board and Tribunal system separates the investigative and disciplinary functions and broadly meets the PC Finding 10.4.2. It is proposed to amend the Architects Act to provide for the Minister to establish a "panel" of persons from which the Board may then appoint members of a Tribunal as required, thus achieving greater separation of the Board and Tribunals .

6.4.9 PC Finding 10.4.3 - Appointing independent bodies to conduct disciplinary proceedings.

Discussion

In accordance with Section 21 of the Architects Act 1991, the Tribunal currently consists of 3 persons the majority of which are architects. The Tribunal members are:

- one member of the Board who is an architect; and
- one person who is not an architect and who may or may not be a Board member; and
- one practicing architect who is not a board member

Owing to the Tribunal having one mandatory and one optional member of the Board it does not meet the PC's Finding that the tribunal should be independent (of the Board). To meet the PC's Finding the replacement of both the mandatory and optional members of the Board would be required to provide full independence from the Board.

The architect members of the Tribunal have contributed to the identification of the relevant issues to the complaint and advising on the standard of practice that would be expected of the practitioner. This provides an insight into professional conduct that would not be achieved if practicing architects were not members of the Tribunal or at least available to it.

Government Response and Action

The Government accepts the need for bodies independent of the Board to conduct disciplinary proceedings. The requirement that members of the Tribunal be members of the Board is proposed to be removed.

6.4.10 PC Finding 10.4.4 - Appointing a majority of non-architects members to complaints and disciplinary bodies.

Discussion

Currently the Tribunal has a majority of members who are architects i.e. two of the three. The role of the architect members has been to provide a better level of understanding of, and therefore inquiry into, the standard of professional practice or conduct that is reasonable. A reduction in the number of architect members of the Tribunal would require the provision of advice, on practice standards, to be available from non-Tribunal member architect(s). This would be an additional cost. The option of increasing the number of members of the Tribunal to retain two architects, but not in a majority, is not supported as three members is sufficient to hear the matters under consideration and more members would result in an increase in cost. A person, preferably the Chair, with knowledge of legal processes is considered desirable to maintain the proper conduct of proceedings and legal practitioners who are increasingly appearing before the Tribunal.

Government Response and Action

The Government accepts the principle of a majority of non-architects on disciplinary bodies and proposes to modify the Tribunal accordingly. None of the members of a Tribunal will be Board members in future. One practising architect member is proposed to be retained and one of the other two members is proposed to be a consumer representative preferably with legal experience and knowledge nominated by the Department responsible for Consumer Affairs. The third member will be a person who is not an architect .

6.4.11 Consumer protection into legislation

PC 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

Discussion

The existing purposes of the Act are to provide for registration and approval of architectural partnerships and companies, regulate the professional conduct of architects and provide procedures for handling complaints against architects. These purposes all indicate that the Board currently has at least an implied responsibility to act in the public interest. The BC/ARBV working party supported the suggestion that further clarification, if needed,

would be of benefit and an amendment to the Architects Act was supported. Any amendment would need to ensure that the legal obligations of the Board are maintained.

Government Response and Action

The Government proposes that the Architects Act be amended to provide for the Board to represent the public interest subject to legal advice on legislation drafting.

6.4.12 Principle 6 - Contestability

PC principle – That there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration)

Discussion

The IGWG did not support the creation of alternative registration authorities but did support the broadening of methods of attaining registration.

The BC/ARBV working party reviewed the four items contained in the PC report (p 172) and concluded that the current processes implemented by the Board met the improvements identified and no further action was required.

Government Response and Action

The Government supports the IGWG Response and as the current processes meet the PC principle no action is required.

6.4.13 National Registration

PC 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.

While not addressed in the PC's six principles for registration, the BC/ARBV working party noted the above PC Finding and the observation that the simplest method of achieving a national registration system would be the collation of each State's Register of Architects. Such collation would be subject to the principles of the Information Privacy Act 2000.

The BC/ARBV working party supported the development of a National Register on the basis of architects continuing to be registered in their state or territory of residence.

Government Response and Action

The Government supports the provision of an electronic collation of each jurisdictions registered architects as the basis for a national register. The Victorian Architects Registration Board currently publishes details from its register on the national web site maintained by the Architects Accreditation Council of Australia.

6.4.14 Mutual Recognition

Discussion

Currently, in order to be registered in each jurisdiction in Australia an architect must separately apply for registration to each jurisdiction. Under the Commonwealth Mutual Recognition Act 1992 a person who is registered to practice an occupation in one jurisdiction is entitled to practice an equivalent occupation in any jurisdiction in Australia, without the need to undergo further testing or examination.

The BC/ARBV working party supported the mutual recognition process as it was leading to the development of national standards and greater consistency between jurisdictions. The BC/ARBV working party proposed that through the ARBV, Architects Boards be encouraged to develop automatic registration in all other States and Territories of Australia with no further cost or requirements.

The BC/ARBV working party also supported the continued development of mutual recognition arrangements with other countries to further the international recognition of Australian architects.

Government Response and Action

The Government notes that registration of architects is also governed by the provisions of the *Mutual Recognition Act 1992* (Cth), and the *Trans Tasman Mutual Recognition Act 1997* (Cth). The Government supports the continue development of co-operative arrangements at a national level on this issue.

7.0 VICTORIA AND NATIONAL REVIEWS – IMPLEMENTATION OF REGULATORY REFORM

The Government proposes to amend the Architects Act 1991, Architects Regulations and Building Act 1993 to accommodate the above proposed actions. Legislation is to be prepared for the Autumn 2004 session of Parliament or as soon as practical thereafter.

The Architects Regulations 1993 will sunset 10 years after the day of making on 25 May 2004. They will be reviewed in their entirety prior to their sunset date. Changes arising from the Governments Response to the NCP Review will be included as part of the sunset review.

APPENDICES

- A. Coordinated Response to the National Competition Policy Review of Legislation Regulating the Architectural Profession
- B. Architects Registration Board of Victoria – Membership

Appendix A

STATES AND TERRITORIES WORKING GROUP ON A COORDINATED RESPONSE TO THE NATIONAL COMPETITION POLICY REVIEW OF LEGISLATION REGULATING THE ARCHITECTURAL PROFESSION

Draft Response

1. Introduction

Under the auspices of the Senior Officials of the States and Territories a Working Group was convened to prepare a joint response to the Productivity Commission *Review of Legislation Regulating the Architectural Profession* (Report No. 13, released on 16 November 2000, hereafter 'the Review'). The Working Group included representatives of all jurisdictions except the Commonwealth, it having no applicable legislation, under the chair of Mr Ted Smithies of NSW Department of Public Works and Services. This Department also provided the secretariat to the Working Group.

The Working Group has prepared this joint response to the Review with the intention of establishing a framework of regulatory principles, which would be realised in each jurisdiction according to its preferred legislative vehicle and timing.

2. Terms of Reference

The Senior Officials agreed the terms of reference set out below for the guidance of the Inter Government Working Group in preparation of its joint response to the Productivity Commission Review.

1. The Working Group is to examine and comment on each part of the recommendation of the review and, if feasible, recommend a coordinated response to each part to Premiers and Chief Ministers on behalf of all jurisdictions.
2. If a coordinated response to any part of the recommendation is not appropriate, the Working Group is to advise on the most appropriate response, either by Premiers and Chief Ministers collectively or by individual jurisdictions.

In providing this advice, the Working Group is to have particular regard to the desirability of achieving consistency across jurisdictions and best practice regulatory arrangements in each jurisdiction.

The Working Group may also have regard to the Productivity Commission's findings on:

- i. improving current architects acts (section 10.2 of the Review); and
- ii. regulating architects under State building acts (section 10.3 of the Review).

3. Productivity Commission's Recommendation

The recommendation of the Productivity Commission Review of Legislation Regulating the Architectural Profession was:

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).*

(page XLII of the Review)

On page 202 of the Review, the Productivity Commission explained that it had a preferred approach: the repeal of Architects Acts opening the way to possible self-regulation, expressed in the first paragraph of the quotation above, and an alternative approach in its guidelines for those jurisdictions which require the registration of all building practitioners, expressed in the second and subsequent paragraphs of the quotation above.

4. Working Group General Approach

In general, the Working Group supports the Productivity Commission'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.

These objectives have guided the Working Group in development of a set of regulatory principles providing a framework for legislative implementation in the jurisdictions. The identification of the appropriate legislative vehicle and timing of the principles' implementation would remain with the States and Territories.

To provide for commonality between jurisdictions with differing approaches to regulation of building practitioners or architects, the Working Group considered the Productivity Commission's alternative approach guidelines as providing a suitable direction for its work.

The Working Group's response to the Productivity Commission's recommendation is provided below in two parts. Firstly a response to the Productivity Commission's preferred approach, followed by a response to its alternative approach.

5. Response to the Recommendation – Preferred Approach

The Productivity Commission's preferred approach is the repeal of Architects Acts and the profession being looked to for creation of a non-statutory certification system. The Working Group saw in a non-statutory system a number of risks. With the small number of architects in Australia, more than one certifier may not be economically viable, leading to a single certifier acquiring a monopoly position.

Such a single certifier could be open to undue influence by organised interest groups, which may lead to reduced usage by the profession. This could decrease market information as to the qualifications and experience of people holding themselves out as architects.

Additionally, the Working Group considered that in this context private certification would not be readily exposed to public, professional or parliamentary review and, isolated from the political process, could become internally focused.

Correcting these failures would entail legislative or administrative intervention at further cost to the profession and/or the public.

The Review's alternative approach recommends the adjustment of existing legislation to remove elements deemed to be anti-competitive, and not in the public interest.

The Working Group considered that, in principle, regulation to restrict the use of the title 'architect' or 'registered architect' is desirable. This provides a public benefit in identifying the members of the architectural profession, unambiguously indicating to the market the difference in the level of qualification of architects as distinct from those without professional qualifications but offering building design or related services.

6. Response to the Recommendation – Alternative Approach

The Working Group's response to the Productivity Commission's alternative approach is set out below. The format adopted is to provide a Working Group statement in response to each element of the Review's alternative approach.

6.1 Regulating Boards having broad industry and consumer representation.

Productivity Commission Recommendation

“that architects be incorporated under general building practitioners boards which have broad representation (including industry-wide and consumer representation)”

Inter-government Working Group Response

Constituting regulatory boards with broad industry-wide and consumer representation is considered a desirable modification to architects boards. Whether architects boards should be incorporated under general building practitioner boards is a matter for individual jurisdictions.

6.2 No restrictions on the practice of building design and architecture

Productivity Commission Recommendation

“that there be no restrictions on the practice of building design and architecture”

Inter-government Working Group Response

Legislation that provides for the registration of architects should not include restrictions on practice.

6.3 Restriction of title

Productivity Commission Recommendation

“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”

Inter-government Working Group Response

Current State and Territory legislation prohibits the use of the title ‘architect’ and any abbreviation or derivative thereof (e.g. ‘architectural designer’) in connection with the practice of architecture or any advertisement of architectural services by other than a registered architect.

Restriction on the use of the title ‘architect’ or ‘registered architect’ should remain.

Where the use of derivatives may potentially mislead the market, jurisdictions may rely on fair-trading laws or other legislation to reduce the risk of deceptive conduct.

6.4 Registration of real persons

Productivity Commission Recommendation

“that only principals (persons, not companies) to contracts be required to be registered”

Inter-government Working Group Response

While not endorsing that only principals to contracts be registered, the Working Group supports the principle that where an organisation offers the services of an architect, an architect must supervise and be responsible for those services.

6.5 Consumer complaints

Productivity Commission Recommendation

“that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures”

Inter-government Working Group Response

The Working Group supported the Review’s finding that consumer protection would be improved by modifications to complaints and disciplinary procedures that, for instance, make them more transparent and provide avenues of appeal.

6.6 Contestability of certification

Productivity Commission Recommendation

“that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration)”

Inter-government Working Group Response

The Working Group queried the practicability of establishing additional certification bodies when there are only approximately 8,000 architects in Australia. It also considered that a conflict of interest might be created where a certification body providing other services to architects or its membership also derived revenue from its certification activities. It would have an incentive to maximise revenue which may lead to compromise in its certification standards.

The Working Group recommends Architects Boards be encouraged to identify means of broadening current certification channels (noting the comments in the Review, page 172), having regard to different combinations of qualifications and experience that would maintain professional standards of competency.

7. Conclusion

The aims of the Productivity Commission in adjusting the manner of regulation of architects is generally seen by the Working Group as in the public interest. It considered that, while increasing competition and consumer protection are important goals, the market must also

have clarity of communication as to the qualifications and experience of building industry service providers. It considered this is best achieved in the current circumstances by legislation for the registration of architects to limit the use of that title to architects.

Addendum – National Register of Architects

Representatives of the architectural profession, the Royal Australian Institute of Architects and the Architects Accreditation Council of Australia, approached jurisdictions individually seeking support for the creation of a national register of architects.

The Working Group considered that mutual recognition legislation provided an adequate framework for this process and did not prevent the compilation of a national register by the profession.

It was suggested that Boards develop memoranda of understanding to formalise any arrangements for a national register.

Appendix B

ARCHITECTS ACT 1991

Part 6--Architects Registration Board Of Victoria

47. Membership

(1) The Board shall consist of 8 members appointed by the Governor in Council.

(2) Of the members of the Board--

S. 47(2)(a) amended by No. 17/1999 s. 20.

*(a) two shall be appointed as representatives of consumer interests and be nominated by the Minister administering the **Fair Trading Act 1999**;*

(b) one shall be a practising senior government architect nominated by the Minister;

(c) two must be architects nominated by architects in the manner prescribed;

(d) one must be nominated by the Minister from a panel of 3 names submitted by the councils of the approved schools of architecture;

(e) one must be nominated by the Minister from a panel of 4 names submitted jointly by--

(i) the Institution of Engineers, Australia, Victoria Division; and

(ii) the Institution of Surveyors, Victoria; and

(iii) the Australian Institute of Quantity Surveyors; and

(iv) the Royal Australian Planning Institute; and

(v) the governing bodies of any related professions determined by the Minister;

(f) one must be nominated by the Minister from a panel of 3 names submitted by the President of the Royal Australian Institute of Architects (Victorian Chapter).

48. Nominations

(1) All panels of names are to be submitted in the manner (if any) prescribed.

(2) If any person or body (other than the Minister) fails to nominate a person or submit the required panel of names of persons for appointment to the Board, the Minister may nominate any appropriate person to be a member of the Board without that nomination or panel.