

TRADE PRACTICES COMMISSIONCOMMISSION DETERMINATION

DATE: 7 September 1984

MEMBERS: BANNERMAN (Chairman)
COAD
GRANTAPPLICATION FOR AUTHORIZATION UNDER S88(1) BY THE
ROYAL AUSTRALIAN INSTITUTE OF ARCHITECTSRegistration No. A58File No. A74/1371. THE APPLICATION

1.1 This is an application for authorization under section 88(1) by the Royal Australian Institute of Architects (hereinafter referred to as RAI A) on behalf of the Institute and its members. The application was granted interim authorization on 17 January 1975.

1.2 The application covers

- A folder entitled "Architects' Services, Conditions and Fees - Issued January 1984" which contains the following documents:
 - . Schedule A - Services to be provided by the architect
 - . Schedule B - Conditions (of engagement of architect)
 - . Schedule C - Bases of payment
 - . Client/Architect agreement
 - . Guide to Architects' Services
 - . Consultants' Guide - Engagement of Consultants
 - . Fee Guide
 - . Working with your Architect

- Code of Professional Conduct ✓
- Memorandum and Articles of Association ✓
- Regulations and By-laws ✓
- Guidelines for RAIA Endorsed Architectural Competitions.

1.3 The TPC prepared a draft determination and summary of reasons which was sent on 28 May 1984 to the applicant and interested parties in accordance with the provisions of section 90A of the Act.

1.4 There was no request for a pre-decision conference. Therefore pursuant to section 90A(5) a final determination may now be made.

1.5 When application for authorization was made in December 1974, RAIA members were required "to observe and uphold the Institute's Conditions of Engagement and Scale of Charges". In August 1980 RAIA issued a set of "fee guidance" documents in the folder entitled "Architects' Services, Conditions and Fees", which replaced earlier Conditions of Engagement.

1.6 The matters of this application are somewhat like those considered by the TPC in 1979 and by the Tribunal in 1981 in the application by the Association of Consulting Engineers Australia (ACEA). In the ACEA application, authorization was sought for the rules, Code of Professional Practice and terms of engagement, including a minimum scale of fees. The Tribunal found that the TPC had been correct in refusing authorization of the ACEA's mandatory minimum fee scales and its general ban on fee competition.

1.7 The Tribunal said, however, that if the Association published a fee scale as a reference and as a valuable aid for most users of engineering services, it would see public benefit in that, provided it is made expressly clear that it is a reference scale only, and that engineers and clients can negotiate on any other basis if they want to.

1.8 The then President of RAIA was involved in the ACEA Tribunal case as a witness. Consideration of the RAIA application by the TPC had to await the outcome of the decision of the Trade Practices Tribunal in the ACEA case, because of likely flow-on implications.

1.9 In February 1982 RAIA promulgated a revised Code of Professional Conduct which, unlike an earlier Code, does not require that members are to observe and uphold the Institute's Conditions of Engagement and Scale of Charges. Rules on supplanting and on prohibitions on advertising have been reworded in the 1982 Code.

1.10 By letter dated 17 February 1982, RAIA indicated that it was prepared to further amend the application documents and to endorse the front of the folder to the effect that the documents relating to "Architects' Services, Conditions and Fees" are reference or guideline documents only and that architects and prospective clients are free to agree conditions and fees on any basis whatsoever.

1.11 Subsequent to issue of the draft determination RAIA has lodged, by letter dated 8 June 1984, an amended version of the folder of documents entitled "Architects' Services, Conditions and Fees". This amended set of documents was issued in January 1984. The amended version incorporates amendments discussed in the draft determination and also amendments made due to evolving circumstances or in the light of experience in the use of the documents.

2. THE TEST

2.1 Section 90(7) of the Trade Practices Act provides, in effect, that the TPC shall not authorize the arrangements unless it is satisfied in all the circumstances that:-

- the arrangements have resulted in a benefit to the public; and
- that the benefit outweighs the detriment to the public constituted by any lessening of competition resulting from the arrangements.

3. MATTERS FOR CONSIDERATION

3.1 Matters for consideration arising out of the application are

- the issue of fee guidance by the RAIA to members
- percentage rate and period allowed for payment on overdue payments
- provisions relating to advertising
- provisions relating to supplanting
- membership provisions
- disciplinary provisions
- RAIA endorsed architectural competitions.

Each of these matters is further discussed below in the context of the documents in which they are raised.

4. ARCHITECTS' SERVICES, CONDITIONS AND FEES

4.1 These are a series of documents consisting of the folder and its contents referred to in para 1.2. The documents specify the services which may be provided by architects, the conditions of engagement, the bases of payment and fee guidance.

(i) The issue of fee guidance

4.2 Reference to fees or fee guidance is made on the folder entitled "Architects' Services, Conditions and Fees" and in some of the documents contained therein, namely in the "Fee Guide" itself and in Schedule C which is headed "Bases of Payment".

4.3 Schedule C provides for five alternative methods of payment to the architect, namely by means of a percentage fee, a lump sum fee, time charges, lump sum fee plus staff time, lump sum fee plus principals' and staff time. It also sets out provisions for reimbursement of expenses.

4.4 An appendix to Schedule C is a standard form for calculation of the actual fee. It makes provision for calculation of fees based on each of the five alternative methods. The choice of method is negotiable between architect and client and the spaces provided for the calculation of the actual fee in this Appendix to Schedule C have been left blank.

4.5 The current guidelines for Architects' Services, Conditions and Fees, dated January 1984 and lodged with RAIA's letter of 8 June 1984 show that contentious paragraphs in the Fee Guide have been amended. The August 1980 Fee Guide and the amended version of the Fee Guide, issued in January 1984, are set out below side by side.

August 1980 Fee Guide

Amended version - Issued January 1984

1. PERCENTAGE FEE

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1.01 Range of Percentage Fees

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The graph below, which takes into account recent surveys of architects' costs, indicates the range of percentage fees likely to be appropriate for various classifications building type where design, documentation and contract administration services ("standard" Schedule 'A') are to be provided.

The graph below, which takes into account recent surveys of architects' costs, indicates the range within which percentage fees will commonly fall for various classifications of building type where design, documentation and contract administration services ("standard" Schedule 'A') are to be provided.

In assessing the actual fee, regard should be had to the complexity classification(s), peculiarities of the particular project, the site, the architect's expertise and experience, client input, tendering climate and any other factor which could have a bearing on the appropriate position in the range of classifications. Where a project includes buildings of more than one classification, regard should be had to the proportion of the total represented by each classification.

In establishing the fee, regard should be had to the complexity classification(s), peculiarities of the particular project, the site, the architect's expertise and experience, client input, tendering climate, building procurement procedures and any other factor which could have a bearing on an appropriate position relative to the range of classifications. Where a project includes buildings of more than one classification, regard should be had to the proportion of the total represented by each classification.

Services and fees may be affected by regional circumstances and in this respect guidance may be available locally.

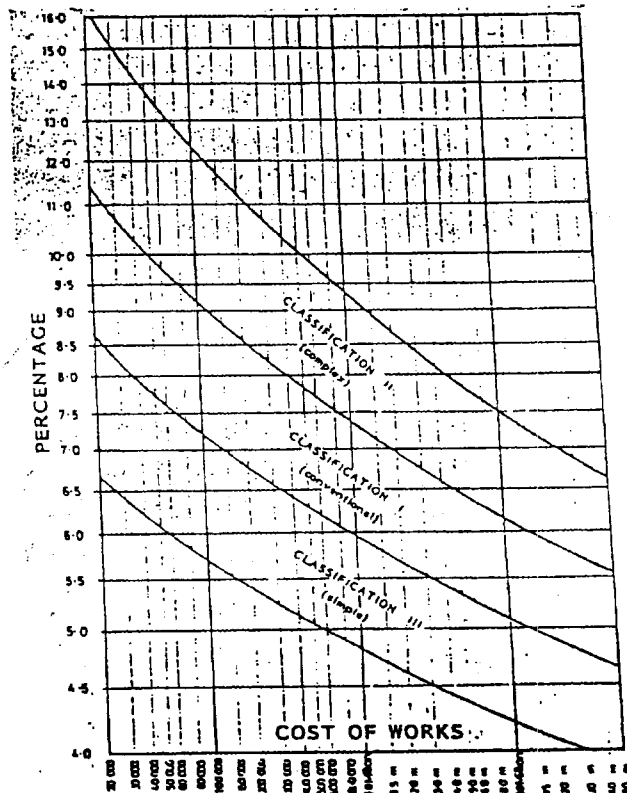
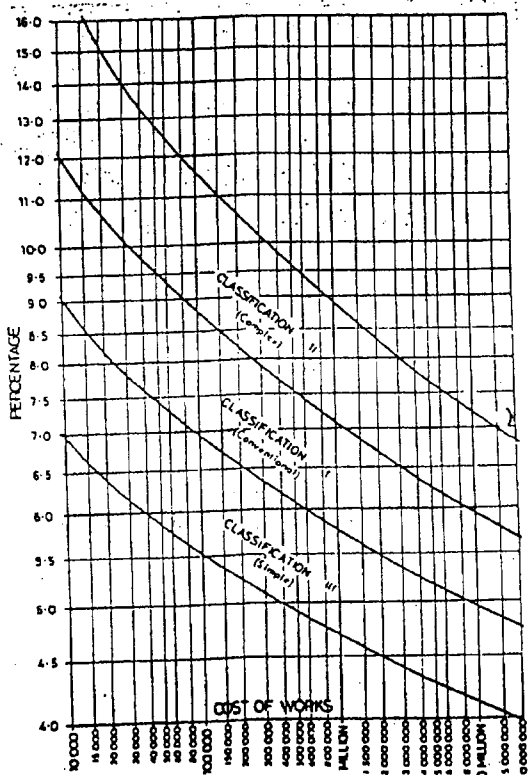
No change

The graph relates to new projects. For alterations and additions a higher fee will generally be appropriate.

No change

Percentages are exclusive of fees payable to consultants.

No change



Fee Guide - Issued August 1980

Fee Guide - Issued January 1984

August 1930 Fee Guide

Amended version - Issued January 1984

1. Classification of Buildings
For the purposes of the percentage fee graph, buildings are classified as follows:

No change

Classification I - Buildings of conventional character

Classification II - Buildings involving special or prolonged study or calculation, or requiring the application of special skills and experience or where the architect's work is increased as a result of the nature of the building.

Classification III - Buildings where the degree of study or calculation, or a requirement for special skills, is reduced by significant consultant input, or where the architect's work is reduced as a result of the nature of the building.

Examples of Building Types Typically Coming Within the Classifications Shown Above.

(Not reproduced)

1.03 Progress Payments - Fee by Stages

No change

Where the architects' fee is a percentage of the cost of the work (or is a lump sum fee) then for the purpose of progress payments the fee should be apportioned by stages. In a typical case this might be as follows:

Schematic design stage	12%
Design development stage	13%
Contract document stage	40%
Contract administration stage	35%

(Note: This assumes that the work is to be carried out in the manner described in the "standard" Schedule 'A'. If the work is to be carried out in a different manner, then an appropriate apportionment should be made.)

1.04 Partial Services

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The percentage fee graph relates to the provision of a continuous service. Partial service involves the architect in work additional to that covered by the base fee. A higher fee pro rata is therefore applicable - generally in the order of 1.1 times that for continuous service.

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2. LUMP SUM FEE

No change

The architect may agree with the client to charge a lump sum fee for his professional service. The fee to be charged may be assessed having regard to a percentage calculation, a time charge calculation or some other method. The position relating to variations, cost escalation, protracted services and the like will also need to be taken into account and agreed.

It may be agreed with the client that should the end cost of the works be less than the predicted end cost an additional fee will be paid. Such additional fee may be computed as a percentage of the cost saving or on some other basis as may be agreed.

3. COMBINED FEE

No change

The architect may agree with the client upon a percentage or lump sum fee sufficient to cover his own fee and the cost of all consultants' fees payable by him.

August 1980 Fee Guide

Amended version - Issued January 1984

TIME CHARGES

Principals' Time

The rate for principals' time (including overhead and profit) should be established taking into account the nature of the work, the qualifications and specialist experience applicable and the organisation of the office concerned. A common rate in June, 1980 (when this guide was prepared) was \$40.00 per hour, with provision for indexing in accordance with changes in the salary of a Class 5 architect in the Australian Public Service.

For services in connection with litigation such as, but not limited to, settling proofs, attending at conferences, attending at the place of hearing, the charge should be based upon the time occupied, with a suggested minimum of three hours charged. Such services normally attract a higher fee than that for general architectural services. As a guide, the hourly rate might be 1.3 times that referred to above.

2 Technical Staff Time

Where alternative (a) of clauses C1.03, C1.04 or C1.05 of Schedule 'C' is used:

The available working hours per year for technical staff should be calculated taking into account weekends, public holidays, annual leave, sick leave and long service leave the number of hours in the working week.

The multiplying factor for technical staff should be calculated to allow for all the normal outgoings of the practice, including salaries of non-chargeable staff necessary to the provision of technical staff services, together with practice profit (including return on equity) adequate to provide for the balanced development of the practice. Reimbursable and capital items should not be included. Such a factor is commonly in the range of 2.0 to 3.0.

Where alternative (b) of clauses C1.03, C1.04 or C1.05 of Schedule 'C' is used, the rate to be charged for technical staff should be established by adding:

The salary per hour for the particular staff classification calculated by dividing the annual salary (including holiday pay loading and any similar items which may become regularly payable) by the number of available working hours per year, and

An allowance to cover all the normal outgoings of the practice, including salaries of non-chargeable staff necessary to the provision of technical staff services, together with practice profit (including return on equity) adequate to provide for the balanced development of the practice. Reimbursable and capital items should not be included. Such an allowance might be a direct proportion of salary (similar to the multiplying factor under alternative (a) referred to above) or might be on a differing basis for different classifications of staff.

Note on clause 4.01

Taking a base figure of 100 as at 30 June, 1980, the index figure as at 1 July, 1981 was 118.2.

By way of example, \$40.00 per hour quoted as the "common rate in June 1980" would as at 1 July, 1981 have increased to \$47.28.

4.01 Principals' Time

The rate for principals' time (including overhead and profit) should be established taking into account the nature of the work, the qualifications and specialist experience applicable and the organisation of the office concerned. As a guide, a common rate in December 1983 (when this guide was prepared) was \$60.00 per hour, with provision for indexing in accordance with changes in the salary of a Class 5 architect in the Australian Public Service.

For services in connection with litigation such as, but not limited to, settling proofs, attending at conferences, attending at the place of hearing the charge should be based upon the time occupied, with a suggested minimum of three hours charged. Such services normally attract a higher fee than that for general architectural services. As a guide, the hourly rate might be 1.3 times that referred to above.

No change

Note on clause 4.01

Taking a basic figure of 100 as at 30 June 1980 the index figure at the time of issue of this Fee Guide (January 1984) was 148.2. As at 19 April the index figure was 154.3. By way of example, \$60.00 per hour quoted as "a common rate in December 1983" would as at 19 April, 1984 have increased to \$62.46.

Addition of new Clause 5 which reads:

5. COPYRIGHT

Throughout this Fee Guide it is assumed that copyright in the architect's work is retained by the architect (in accordance with clause B4.01 of Schedule 'B'). Should copyright be assigned to the client, this should be taken into account in assessing the fee, having regard to the likely extent of re-use.

4.6 The terms on the August 1980 folder entitled "Architects' Services, Conditions and Fees", and the amendments which have been incorporated in that issued January 1984, are as follows:

ARCHITECTS' SERVICES, CONDITIONS AND FEES

August 1980

In recent years, the building needs of society and the technology and organisational methods available to meet those needs have increased both in extent and in complexity.

Keeping with these changes architects have developed and are continuing to develop a wide range of services to meet the varying requirements and circumstances of their clients.

A variety of services (compared with the almost "standard" service of only a few years ago) makes it more necessary than ever that when a client engages an architect both should be made clear as to the particular services to be provided and the fees to be paid. To assist in this, the Royal Australian Institute of Architects has prepared a new series of documents. These include:

A brief outline of some of the services which architects may provide. The aim of this is to assist in identifying those services which may be most appropriate to any particular circumstances.

A set of documents for establishing the contract between client and architect. These comprise a form of agreement, a schedule for setting-out the services to be provided by the architect, a schedule of general conditions appropriate to most circumstances and a schedule of bases for payment, including a number of alternatives.

A guide to fees giving an indication of the range of fees which may be appropriate in various circumstances and also a guide to ways in which consultants may be engaged.

The experience of architectural practices, as shown in surveys carried out by the University of New England, has indicated that the cost of providing architectural services is now substantially affected by many factors besides the cost of the building works concerned. It is therefore no longer reasonable to set standard fees applicable to all projects. Further, there is an increasing incidence of circumstances where the traditional percentage framework is no longer appropriate.

The Royal Australian Institute of Architects has therefore discontinued the mandatory minimum scale. At the same time, however, the Institute recognises that some guidance is likely to be helpful to both architects and clients and has therefore produced a guide to indicate the range of fees which might be appropriate in the more commonly occurring circumstances, leaving it to individual architects and their clients to agree fees for each particular project taking into account all the factors involved.

Amended version Issued January 1984

No change

No change

No change

No change

A set of documents for use as a guide in establishing the contract between client and architect. These comprise a form of agreement, a schedule for setting-out the services to be provided by the architect, a schedule of general conditions appropriate to most circumstances and a schedule of bases for payment, including a number of alternatives.

A guide to fees giving an indication of the range within which fees appropriate to various circumstances commonly fall, together with a guide to ways in which consultants may be engaged.

The experience of architectural practices, as shown in surveys carried out by the University of New England, has indicated that the cost of providing architectural services is now substantially affected by many factors besides the cost of the building works concerned. It is therefore no longer reasonable to set standard fees applicable to all projects. Further, there is an increasing incidence of circumstances where the traditional percentage framework is no longer appropriate. Accordingly fees are a matter for agreement between architect and client in the circumstances of each individual case.

In 1980, therefore, the Royal Australian Institute of Architects discontinued the mandatory minimum scale. At the same time, however, the Institute recognised that some guidance was likely to be helpful to both architects and clients and therefore commenced the issue of a guide to indicate the fees which might be appropriate in the more commonly occurring circumstances, leaving it to individual architects and their clients to agree fees for each particular project taking into account all the factors involved.

4.7 In the Explanation of Documents which is on the inside cover of the folder entitled "Architects' Services, Conditions and Fees", the Fee Guide was described in 1980 as giving an indication of the range of fees which may be appropriate in various circumstances". The words "range of" have now been omitted from this statement.

4.8 Also on the inside of the 1980 folder, the statement "Having established the method of charging, actual rates have to be decided. This should be done after consulting the Fee Guide and taking into account all relevant factors" has been amended by altering the second sentence now to read "This should be done after considering all relevant factors - the Fee Guide may be of assistance in doing this".

4.9 The Applicant had already indicated that it is prepared to endorse page 1 of the folder by way of preamble that

"All documents referred to or contained herein are reference or guideline documents only. Architects and prospective clients are free to agree conditions of engagement and fees on any basis whatsoever, providing that these are not in conflict with the law applicable in the State or Territory concerned."

4.10 RAIA has submitted that as the statement, quoted in para 4.9 above, is a qualifying statement rather than an introduction, it would be better placed as the final paragraph on page 1 of the cover rather than as a preamble at the top of the cover. The TPC agrees to this, and of the three alternative formats suggested by RAIA, favours the placement at the end of the page in the margin.

4.11 On the basis of the amendments incorporated in the 1984 document and the proposed statement which the applicant will make on the folder (see paras 4.9 - 4.10 above), the TPC considers that the anti-competitive aspects involved in the original clauses appear to have been removed.

(ii) Overdue Payments

4.12 Schedule B within the folder "Architects' Services, Conditions and Fees" is entitled "Conditions". Under Clause B 3.02, which relates to overdue payment of fees for architects it is specified in the January 1984 issue that:

"The architect is entitled to interest at the same rate as the maximum overdraft rate last fixed by the Reserve Bank plus 2* percentage points on all fees due and not paid within 30* days of rendering of account without relieving the client of his obligation to pay the account".

4.13 A footnote has also been inserted which reads:

"*if different figures are required, amend and have initialled by both parties".

4.14 The asterisks in the clause and the footnote were added after the matter of overdue payments had been taken up with RAIA.

5. CODE OF PROFESSIONAL CONDUCT

(i) Advertising

5.1 The restriction on advertising was contained in Clause 3 of the Code of Professional Conduct lodged when the application was originally made. Under this clause members were not to advertise publicly their professional services, nor allow their names to be included in advertisements or to be used for publicity purposes subject to certain exceptions. These exceptions were only permissible in an unostentatious forms.

5.2 A revised Code of Professional Conduct was promulgated to take effect from 11 February 1982. The new Code contains no restriction as to whether or not members are allowed to advertise their services. It just reminds members that public communication shall be carried out in a professional and responsible manner and provides guidelines on how that can be achieved.

5.3 The Clause in the revised Code now appears not to be anti-competitive.

(ii) Supplanting

5.4 Under the Code of Professional Conduct prior to 1982, members had the responsibility to the Institute and fellow members "not to supplant another member, partnership or corporation".

5.5 Under the revised Code of Professional Conduct (1982) members have the responsibility to the profession and allied professions "to not attempt to supplant another architect, employed or consulting, who has been appointed with a firm commitment for a particular project".

5.6 This rule no longer appears to contain any anti-competitive potential.

(iii) Fee Guidance

5.7 Reference to a fee scale has been deleted from the 1982 Code.

6. MEMORANDUM AND ARTICLES OF ASSOCIATION, REGULATIONS AND BY-LAWS

(i) Admission to membership

6.1 Regulations 63 and 64 of the Regulations and By-laws to the Articles of Association deal with admission to membership of the RAIA. The regulations specify the academic and practical experience requirements which have to be met for admission as a member to the Institute. The TPC's concern here is that trade and professional bodies should not use their membership regulations for anti-competitive purposes by restricting entry. If there is provision for appeal to an independent body when admission to membership is denied, this anti-competitive aspect can be offset.

6.2 This matter had been taken up with RAIA by staff, and RAIA had submitted that there is no coercion to join the Institute: membership is an individual choice, based on a person's own assessment of its value to him or her. There is no record of any denial of membership to persons meeting the

criteria and it is unlikely that such denial would ever occur. In the practice of architecture, by architects, there is no difference whether a person is a RAIA member or not.

6.3 Even though membership of RAIA is not a legal necessity to practise as an architect, denial of RAIA membership may deprive an architect of a status that is of considerable competitive value. For this reason it is important that provision should be made for appeal to an independent arbitrator where admission to membership is denied. The applicant has submitted that an appeal to a nominee of an independent body, such as the Institute of Arbitrators of Australia, could be incorporated.

6.4 In order to meet the appeal requirement in relation to membership provisions, RAIA has submitted that it proposes to insert a new Regulation reading:

"Where the Council of a Chapter or an area committee, or the Secretary of the Institute, denies admission to membership, this shall be subject to the right of appeal to an arbitrator to be nominated by the President of the Institute of Arbitrators, Australia.

The applicant making such appeal should firstly give notice in writing of the appeal and this notice in writing should be lodged with the Institute within thirty days of the date of denial of membership. The aggrieved applicant shall then apply directly to the President of the Institute of Arbitrators Australia for the appointment of an arbitrator to consider the appeal. The decision of the arbitrator shall be final."

6.5 RAIA has already taken steps to amend the regulations and as soon as legal advisers approve the wording, action can be taken to have the new Regulation approved by National Council. RAIA expects that the procedure for amendment can be completed by the end of September 1984.

6.6 The proposed amendment meets the TPC's requirement for an avenue of appeal to an independent arbitrator for ultimate decision on membership applications. .

(ii) Disciplinary provisions

6.7 Articles 53, 54 and 55 of the Articles of Association deal with misconduct by members, with complaints about such misconduct and with the disciplinary action to be taken against members for such conduct.

6.8 Article 53 in effect applies in respect of alleged misconduct during the period 28 May 1971 to 18 May 1976 but provides that person(s) submitting the report alleging misconduct and the member(s) against whom the allegation is made may consent to the application of Articles 54 and 55 in lieu of Article 53.

6.9 Articles 54 and 55 apply to alleged misconduct after 18 May 1976.

6.10 This matter had also been taken up by staff and it was suggested that provision be made for appeal to an independent body in respect of disciplinary action taken against a member under Articles 53 and 54.

6.11 In reply the applicant submitted that for alleged breach of the Code of Professional Conduct prior to 18 May 1976 Article 53 has been superseded by Articles 54 and 55. In view of this and of the unlikely event of charges being laid against members concerning occurrences eight years ago, the applicant believes that Article 53 is now effectively in limbo.

6.12 With regard to Article 54, the Applicant has suggested that provision might be made for an appeal by a member against reprimand, suspension or expulsion by permitting application to an arbitrator nominated by the Institute of Arbitrators Australia, being a body totally independent of the RAIA and comprising persons who may be lawyers, builders, engineers, architects and others, having skills in dealing with disputes concerning building contracts, and other matters associated with the building and construction industry.

6.13 In order to meet the appeal requirement in relation to disciplinary provisions, RAIA has submitted that it proposes to insert a new Article in the Articles of Association reading:

"Appeal: The decision of a disciplinary committee shall be subject to the right of appeal by any person aggrieved by the decision of a disciplinary committee to an independent arbitrator to be nominated by the President of the Institute of Arbitrators Australia.

The person making such appeal shall firstly give notice in writing of the appeal and this notice shall be lodged with the President of the Royal Australian Institute of Architects within fourteen days of the decision of the disciplinary committee. The aggrieved person shall then apply directly to the President of the Institute of Arbitrators, Australia, for the appointment of an arbitrator to consider the appeal. The decision of the arbitrator shall be final."

6.14 To meet this requirement, RAIA members in General Meeting must approve the amendment to the Articles of Association. RAIA is awaiting legal advice as to the wording of the new provision which, although already approved in principle by RAIA Council, requires to be put to the NSW Attorney-General for approval (RAIA is incorporated in NSW), following which it must be put to the membership at large for approval.

6.15 The next Annual General Meeting of RAIA will not be held until May 1985. The alternative would be to call an Extraordinary General Meeting which, however, is more difficult to organise, more time consuming and more costly. For these reasons RAIA wishes the TPC to consider authorization on the

basis that RAIA will have the provisions for appeal incorporated in the Articles of Association by May 1985.

6.16 The proposed amendment meets the TPC's requirement for an avenue of appeal to an independent arbitrator for ultimate decision on disciplinary actions.

7. GUIDELINES FOR RAIA ENDORSED ARCHITECTURAL COMPETITIONS

7.1 This document gives guidelines of a competition system by which a promoter opens up his building project to the whole profession of architects. The competition provides the promoter with a range of architectural talent being focussed on his project.

7.2 The guidelines describe the conditions for various types of competitions e.g. there are competitions restricted to competitors within regions, States or nation-wide participation, there are options for ideas or project competitions, competitions open to a limited number of architects or open competitions, competitions open to selection of architects by the promoter or by an Institute Committee, single stage or two stage competitions.

7.3 There are rules for appointment of assessors, who determine the winning entry, and also rules for selection and appointment of the architect.

7.4 Assessors' duties are specifically defined. In order to attract assessors of the right calibre and experience, the Institute has prepared a recommended scale of fees which from experience equates to a fair remuneration for the work involved.

7.5 Submissions of designs by architects in competitions are on an anonymous basis and are kept secret until the end of the competition or until the final results are announced. The promoter is normally expected to agree to formally appoint the author of the design selected for execution as architect for the work.

7.6 The appointed architect negotiates with the promoter an appropriate fee for professional services for the execution of the project. The competition premium may, subject to these negotiations, be deemed to be payment on account towards the total fees payable.

7.7 In the preface to the Guideline for Architectural Competitions there is a reference to members of the RAIA being obliged to comply with the Institute's rules which require members to compete fairly with other members. RAIA has stated that that paragraph is to be amended to read as follows:

"Members of the RAIA are obliged to comply with the Institute's Code of Professional Conduct which requires - inter alia - that members promote the advancement of architecture, promote the concept of architectural excellence, and to ensure that the quality or adequacy of services offered is not compromised in establishing levels of recompense for these services.

RAIA members are free to compete in design competitions of any description. However when a promoter seeks RAIA endorsement of an architectural competition conditions are formulated whereby the Institute's and the promoter's prime objectives are met (i.e. the advancement of architecture, and the best design solution the profession can offer) but whereby the inordinate call on the time and funds of competing architects is kept to reasonable minima."

7.8 The TPC agrees that architectural competitions have the potential to enhance the promotion and advancement of architecture and it sees public benefit in the RAIA guidelines for such competitions.

8. CONCLUSIONS ON COMPETITION AND PUBLIC BENEFIT

(i) Issue of fee guidance

8.1 On the basis of the endorsement which the applicant is prepared to make on the folder on Architects' Services, Conditions and Fees and the amendments to the folder and the documents contained therein, individual architects and their clients have the freedom to negotiate and agree on fees for each particular project. In these circumstances the issue of fee guidance documents by RAIA will not have a substantial effect on competition.

8.2 During interviews held with Commission staff, architects and clients of architects made the following points, which the TPC broadly has no reason to doubt:

- RAIA has moved to guidance or reference fee scales;
- the scales allow for flexibility in pricing by individual architects and the pricing flexibility allows for negotiation on fees;
- many architects and clients of architects see public benefit in the issue of fee guidance documents;
- it is regarded as helpful and important to have some guide on fees;
- it identifies a range of possibilities;
- the RAIA fee guide provides scope for flexibility on fees that individual architects may charge and provides a choice as to the basis of charging;
- the guideline provides a reference point and a client knows about how much services are going to cost;
- without a fee document it would not be possible to give clients some notice of prevailing fees and to substantiate what is being charged to them;
- a guideline or indicative scale is helpful so that less experienced clients can appoint an architect on scale fees and be confident that it is going to be a fair basis to appoint them;
- the guideline is worthwhile and of benefit; it gives informed clients a basis for negotiation on fees and is a reference point for clients using architects far less frequently; to uninitiated clients it provides protection by indicating a range of the going rates;
- the guide is helpful to clients for comparison purposes; with a guide, the clients can feel everyone is probably on the same footing, which can give them confidence with regard to the architectural fee they are being charged;

- the fee guide protects the public interest by preventing gross overcharging;
- it provides the profession with internal discipline and gives a benchmark against which significant disparities upward have to be justified;
- the guide is also considered of assistance to young architects who have no idea how to charge and assess costs when first setting up.

8.3 The fee guidance documents form part of a series of documents which specify the services which may be provided by architects, the conditions of engagement, the bases of payment and the fee guide itself. The TPC is persuaded by what has been said that the RAlA guidance on fees is regarded as a valuable aid by architects and users of architects' services.

8.4 The TPC therefore considers that there is value in fee guidance documents in which it is made clear that they are a reference or guideline only.

8.5 The TPC points out that the principles and procedures in formulating fee guidelines and the question of whether they are fair and reasonable are not matters which come within its ambit in this application. The TPC's consideration is directed to the principle of fee guidance rather than the level of fees and it proceeds in the expectation that competition between architects will operate to determine actual fee levels and as a force to contain them.

(ii) Overdue Payments

8.6 The TPC has no objection to the current conditions on overdue payments in clause B.3.02 of Schedule B.

(iii) The Code of Professional Conduct

8.7 The rules in relation to advertising and supplanting have been amended in the revised Code of Professional Conduct and the revised Code no longer requires that members are to observe and uphold the Institute's Conditions of Engagement and Scale of Charges.

8.8 The TPC finds public benefit in RAIA having a Code of Professional Conduct which lays down members' responsibilities to the public and to clients and employers.

(iv) Membership admission and disciplinary provisions

8.9 Notwithstanding the fact that RAIA membership is not a legal necessity for the carrying on of business as an architect, provision should be made for an avenue of appeal to an independent arbitrator for ultimate decision on membership applications and disciplinary actions.

(v) Guidelines for RAIA Endorsed Architectural Competitions

8.10 There does not appear to be any anti-competitive detriment in the document entitled RAIA endorsed Architectural Competitions. As indicated above (see para 7.8) the TPC agrees that architectural competitions have the potential to enhance the promotion and advancement of architecture and it sees public benefit in the RAIA guidelines for such competitions.

9. OTHER MATTERS

9.1 There are two further matters which RAIA has raised since issue of the draft determination.

9.2 In the first matter RAIA compares its position with the outcome of the Association of Consulting Engineers Australia (ACEA) Tribunal Case. RAIA has submitted:

"Architects Services, Conditions and Fees, and Guidelines for RAIA Endorsed Architectural Competitions"

These documents are guidelines only. As we understand it, the outcome of the Tribunal relating to the ACEA application for authorization was that the ACEA was granted authorization to issue guide documents to its members.

The RAIA considers that as a body with similar obligations, it should likewise be granted authorization to issue guideline documents to its members. The draft determination does not make this clear, and we believe it should.

.....

The RAIA believes that it should remain responsive to changes according to the demands of the market place and community attitudes. Architects, and their client public, will need to have access to evolving guidelines in response to these changing circumstances.

We therefore submit that the final determination should authorize the promulgation of our current documents as agreed, together with the acceptance of the principle that RAIA is authorized to issue further guideline documents to its members as evolving circumstances warrant."

9.3 The TPC agrees with the view that the matters of this application are similar to the matters considered by the TPC and the Tribunal in the ACEA application. There may be some changes to RAIA documentation resulting from changed circumstances which may not affect the grant of authorization for issuing RAIA guideline or reference documents. On the other hand, of course, RAIA and its members may become at risk if principles are changed in the documents or if there is a major revision of the documents. Essentially it is a matter for RAIA to consider whether any changes to the documentation may have an effect on what has been authorized and whether such changes may put it at risk in Trade Practices Act terms. TPC staff are of course available whenever RAIA would wish to submit any amendments for consideration and perusal, say once every two or three years.

9.4 The second matter concerns the issue by RAIA in March 1984 of a short form of "Architects' Services, Conditions and Fees" for use on jobs where architects and clients find the full documentation too complex.

9.5 RAIA submitted that the conditions in this new document are the same as in the "full documentation" (except for minor editorial changes necessary because of the form of the document). The fee provisions have been simplified, particularly in relation to time charges. The services to be provided by the architect are the normal basic services (as in the standard Schedule 'A' of the "full" documents) with provision for addition of minor further services.

9.6 The short form is new and does not form part of the documents covered by the application. Hence the TPC cannot at this stage consider the short form for authorization purposes.

9.7 However, as on RAIA's submissions the short form is merely a simplified version of the full documentation and authorization is being granted to the latter, it is highly unlikely that the short form would contravene the Act.

10. DETERMINATION

10.1 For the reasons outlined above and subject to the conditions set out below, the TPC grants authorization in respect of RAIA's arrangements as provided for in

(i) "Architects' Services, Conditions and Fees - Issued January 1984" and the documents contained therein, namely -

- . Schedule A - Services to be provided by the architect
- . Schedule B - Conditions (of engagement of architect)
- . Schedule C - Bases of payment
- . Client/Architect agreement
- . Guide to Architects' Services
- . Consultants' Guide - Engagement of Consultants
- . Fee Guide
- . Working with your Architect

subject to the conditions that:

- . the front cover of the folder is endorsed as indicated in paras 4.9 - 4.10 above; and
- . a copy of the folder so endorsed is lodged with the TPC by 31 October 1984 for placing on the public register;

(ii) Code of Professional Conduct

(iii) Memorandum and Articles of Association

subject to the conditions that:

- . the Articles are amended by 31 May 1985 as proposed in paras 6.13 - 6.15 to provide for right of appeal to an independent arbitrator; and
- . a copy of the amendment so made is lodged with the TPC by 31 May 1985 for placing on the public register;

(iv) Regulations and By-laws

subject to the conditions that:

- . a new regulation is inserted by 31 October 1984, as proposed in paras 6.4 and 6.5, to provide for right of appeal to an independent arbitrator; and
- . a copy of the new regulation so made is lodged with the TPC by 31 October 1984 for placing on the public register;

(v) Guidelines for RAIA Endorsed Architectural Competitions.

10.2 A copy of the documents referred to in para 10.1 has been placed on the public register with this determination.

10.3 The interim authorization is revoked.

YES NO

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