



INTEGRITY

Australian Institute of Quantity Surveyors



5 October 2004

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Pacific Association of
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Australian Construction
Industry Forum

Australian Council of
Building Design
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Construction Information
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Mr Tim Grimwade
The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

FILE No:
DOC:
DATE:

SUBMISSION RE THE ACCC REVIEW OF AUTHORISATION A58 FOR THE RAIA

Dear Mr Grimwade,

Introduction

The Australian Institute of Quantity Surveyors (AIQS) represents members of a profession which has not been regulated by State Government legislation (except partly in Victoria).

Federal, State and Territory Governments have historically relied on the AIQS to regulate the standards and conduct of the 3,300 members of the Quantity Surveying (QS) profession that are AIQS members. It should be noted that membership of the AIQS is not necessary to work as a QS in Australia and no formal qualifications are mandated by Governments (except in Victoria). There could be as many as 1,000 non AIQS members of unknown standard operating as QS in Australia.

We have now been invited to comment on the ACCC's review of the authorization A58 granted to the Royal Australian Institute of Architects (RAIA), in particular to their Code of Conduct and Guideline Scale of Fees.

We note that the ACCC considers that this review is warranted on the grounds that there has been a material change in circumstances since the authorization was granted.

AIQS Comments

The AIQS is associated with the RAIA on a number of levels, including industry peak bodies such as the Australian Construction Industry Forum (ACIF), Professions Australia (ACP) and the Australian Council of Building Design Professions (ACBDP) and in more direct ways.

Quantity Surveyors routinely interact with Architects in the course of normal business and regularly examine architects' documents in minute detail in the course of our work.

As a result, quantity surveyors have an intimate understanding of the evolution, good and bad, in Architects' services over the past twenty-five years.

We are of the view that, apart from a few exceptions, since the advent of the Trade Practices Act and the consequent emphasis on fee competition, there has been a continuous decline in the standards and capability of architectural practice, particularly in the areas of:



- Quality of documentation. Most States have recently established committees and protocols to attempt to arrest the alarming decline in documentation quality.
- Increased variations. CSIRO research shows that the volume and severity of variations has significantly increased.
- Loss of core skills. It is commonly accepted that many young architect's can not undertake basic common tasks, such as specification writing and architectural detailing.
- Education. Accepted learning models such as mentoring, research and life long learning have all but stopped.
- Socially responsible employment. Permanent employment has declined, resulting in less mentoring and training and personal hardship for casual employees.

The outcome has been:

- Poor quality built environment, particularly in residential development, leading to wasteful use of resource and poor quality community lifestyle.
- Increased uncertainty of outcomes for clients.
- Increased risk for clients and governments
- Scant attention paid to environmental sustainability.
- Loss of training and employment opportunity nationally.
- Critically low levels of capital, leading to
- Critically low levels of investment in innovation and technology uptake.
- Critically low levels of corporate research and professional development.
- A total lack of export readiness and inability to invest in export potential.

The removal of self-regulating constraints on professionals in our industry has arguably had a substantially detrimental effect on the public interest. It is extremely unlikely that continuing this course of action would have anything but further negative impact on the public, now and in the future.

The AIQS has considered the ACCC Notice and our knowledge of the RAIA and comment as follows:

In para 3.1 of the Notice, the ACCC states that "changes have occurred that are likely to have impacted upon the public benefit and public detriment resulting from the authorized conduct.

These impacts (effects) are very briefly described in paras 3.13 to 3.16 but without any supporting references or evidence.

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In paras 3.13 and 3.14, the ACCC assumes that the public benefit may have been reduced by the removal of certain information eg the Guidelines for RAIA endorsed architectural competitions from the originally authorized information.

While the AIQS can not comment on the particular effect of each removal, we believe that the overall usefulness of the information provided may not be reduced to any significant degree and the public benefit of the remainder of the material provided is most likely still relevant.

Para 3.15 suggests that State and Territory Governments have moved away from restrictions on architects' conduct because they no longer see any public benefit in such restrictions, therefore there is reduced justification for the RAIA having a Code of Conduct for its members.

We suggest that the States and Territories are more likely to have made legislative and policy changes in response to the Trade Practices Act and the Federal Government's National Competition Council's actions. In particular, to benefit in the tens of millions of dollars offered by the Federal Government to encourage States and Territories to make such changes, rather than any perceived reduction by them in the public benefit derived from their legislative regulation of the architects. The contrary argument may be well justified that because of such State and Territory Government moves, it is all the more important that the RAIA maintains its Code of Conduct in the public interest.

In fact, contrary to the view that State Governments see no benefit in supporting a viable future for the professions, every State Government has introduced or will soon introduce Professional Services Legislation in order to create an environment in which professions can regulate the behaviour of their members and maintain and grow the significant body of collaborative knowledge that they create for the benefit of the nation. The Federal Government has even amended the Trade Practices Act to support this legislation.

We submit that it is more important than ever to encourage and strengthen self-regulation of professions to maintain the public confidence in the integrity and value of professional services.

Para 3.16 suggests that increased access to industry information through media such as the internet, has reduced the public benefits of the RAIA fee guide or directives to its members.

To verify this suggestion, on 27 September 2004, the AIQS conducted a search on Goggle for "Architects Fees in Australia" and 9,070 references were reported. However, of the 813 of the referred websites we visited, not one of them provided any detailed or useful information about architects' fees, costs or employment conditions which would have been useful to a client or member of the public wishing to engage an architect. Based on this sample, we believe that such a claim by the ACCC is incorrect.

With respect to fee guides, architects' and other professions' services are generic by nature and outcome oriented. This is, of course, a desirable objective for any business or industry, but without a fee guide it is difficult for architects to establish fees on the alternative model, based on inputs (since they can not predict what they might all be). It has led to more and bigger claims and disputes for fees that are wasteful

of time and, often, public money. Encouraging disputes by having no proper basis for fees is not in the interests of the public, clients or the industry.

Further, the significant majority of Architect's clients, including Government Departments, wield significant market power over architect's and other professionals. Because these clients have little interest in a viable future for the professions it has led to a low-fee environment that has already damaged the public interest in the ways described above.

The AIQS experience

Code of Conduct. While the AIQS has not been a Government regulated profession, we have experienced many of the same problems as those regulated professions.

In our experience based on the frequency and number of enquires we receive by telephone, email and our website, the general community, plus the public and private sectors of the building and construction industry, expect that the professional Institutes should be able to provide them with some guarantee that, when they engage one of our members, they can be confident that those members will perform their services at an appropriate professional and ethical standard. Those clients look to the Institutes for that reassurance. Generally, they feel that they do not have the experience, resources, knowledge or time to make such investigations themselves. They also expect that any member who fails them in providing that level of service may be investigated and, if necessary, disciplined by the relevant professional Institute. Some perceive this as their only course of action to have a grievance addressed because they do not have the resources to pursue legal action against the member or the matter is not of a legal nature.

Thus we believe that there is substantial public and industry benefit from such activities by the professional Institutes and a professional Code of Conduct is essential for that interest to be maintained.

It should be remembered that membership of professional bodies is not essential for individuals or firms to operate in that occupation. Anyone not agreeing with our rules or policies does not need to be a member to earn a living. We are therefore not restricting trade or being anticompetitive in any way.

AIQS is a member of a number of international groupings, including the Pacific Association of Quantity Surveyors. We have noted with interest that codes of ethics are of the greatest interest to nations where ethical behaviours have not been regulated by professional bodies. We also note that yet unpublished research into ethical behaviours by Dr Joanna Poon, London and funded by the AIQS, concludes that ethical behaviours are influenced by all kinds of pressures, not the least financial pressures and that codes of ethics are a most desirable way of regulating members' behaviour in the interests of the public. It would seem a pity if Australia was forced to take a backward step in this regard.

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Guideline Fee Scales. Similarly, the AIQS receives numerous enquiries from potential and existing QS clients, seeking some guidance or advice on the level of QS fees that they could expect to pay for a particular service, the conditions of engagement that they should expect and/or the method of calculating QS fees. The reaction of these enquirers, when told that we are unable to give them the specific advice they seek due to the ACCC and competition policy legislation, ranges from disbelief to anger. Members of the public, who desperately seek such information, find it difficult to accept that they are prevented from receiving the same because the law says it is not in their interest for us to give it to them. Again they do not have the experience, resources, knowledge or confidence to find this information for themselves and they expect that the professional bodies should be able to assist them with such services.

This is true of public sector clients as well as the private sector and particularly the general community. Indeed some State Government authorities continually seek our assistance on this issue.

Also it should be remembered that the so-called fee scales are guidelines only and are not in any way enforceable on Institute members. At best they can only provide clients with a benchmark but it is a service that clients clearly want and certainly do not consider it "not in their interest" for the professional bodies to provide such advice.

Final Comment

The ACCC has offered no substantive evidence for why they feel this review is required. The onus seems to be on the RAIA and other professional bodies to justify their positions and policies, while the ACCC can create a review on an apparent whim and where there is no offered evidence to support those doubts.

If the ACCC has documentary support for such a review, then we believe that evidence should be presented for public scrutiny and to ascertain if there are, in fact justifiable reasons for forcing the professional bodies into these costly and possibly unnecessary reviews.

In Summary.

The AIQS believes that the "material changes" referred to in the Notice by the ACCC are not sufficiently significant to successfully argue that the "public interest" has been substantially reduced in any way.

Indeed we would argue that in today's deregulated professional service market, Institute Codes of Conduct and Guideline Fee Scales are even more necessary than ever to protect the "public interest", provided that in preparing and presenting those Codes and Guidelines the Institutes' do not act in a collusive or anticompetitive manner.

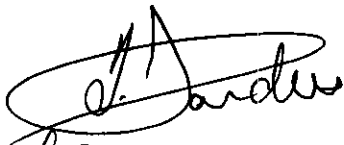
We further note that that the Federal Government has endorsed 2004 as the Year of the Built Environment, recognising the importance of the built environment as a critical national resource.

Today's architects are the key profession responsible for the quality, safety and sustainability of the built environment for at least the next century.

The RAIA is the national custodian of architectural standards and the national architectural body of knowledge.

In the interests of the Australian people, it is the signal responsibility of the governments of Australia, all of the participants in the development and construction industries and the ACCC to foster and nurture architecture by supporting the right of the profession to regulate itself effectively to ensure that present and future Australians enjoy a sustainable and quality lifestyle through quality architecture.

Yours faithfully,



J Lowry
National President