REGISTRATION OF ARCHITECTS

This edited version of material from the Board of Architects of New South Wales' Bulletin '89 comments upon the lack of uniformity of legislation in Australia governing the registration and conduct of architects. It also comments upon proposals for review of the NSW Architects Act and the potential for this legislation to serve as a model uniform Act for the other States and Territories.

The profession of architecture is subject to eight distinct statutes throughout Australia - and the differences are quite significant. The profession, through RAIA, has long worked for uniformity through a national Act. Politics being what it is, a national Act remains an elusive ideal. Fortunately, the Architects Accreditation Council of Australia has stepped in to provide an alternative which works to some degree.

For those unfamiliar with the AACA, it has been created by its constituent bodies, the State and Territory Architects Registration Boards and the RAIA, to deal with recognition and regulatory issues which require a national response. The AACA Council is composed of the Presidents and Registrars of the Registration Boards and the RAIA National President and Director General who represent their respective AACA Nominating Bodies each year at the Annual General Meeting of the Council.

By authority derived from the individual Boards, AACA can, and does, establish criteria for national recognition of qualifications and registration. A sort of back-door uniformity of registration. AACA has now asked the NSW Board to consider the possible application of the future NSW Act as a model uniform act in Australia. This is a challenge which the NSW Board of Architects has welcomed and which it will strive to achieve.

Review of the Architects Act (NSW)

.1 The Regulation Debate

It is not entirely by chance that the Board of Architects of New South Wales chose to undertake its review of the Architects Act this year. Discussion on the issue of occupational regulation is current at both State and Federal Government level. Victoria is faced with the possibility of repeal of its Architects Act and South Australia may be subjected to similar moves. The Minister for Employment, Education and Training (DEET), Mr John Dawkins, recently stated that "the promotion and encouragement of occupational deregulation" was a key element in the government's strategy to improve Australia's training system.

In New South Wales the recently enacted Sub-ordinate Legislation Act provides for "sunsetting" all legislative regulation every five years, including the Regulations which form part of the Architects Act. Alternative measures for regulating occupations and professions are being debated in several quarters and it is against this background that the architectural profession must look carefully at its own regulatory procedures to ensure that they are in the public interest and in the interest of the profession itself.

.2 Review of the Architects Act

The review of the Act has been the main focus of the Boards' work this year. RAIA NSW Chapter and ACA representatives joined the Board on sub-committees to study all matters relating to professional regulation. Their preliminary recommendations are now being considered and although discussion is at an early stage several serious proposals for change have emerged. These include:

- Discontinuation of the division of non-charted architects on the register and a return to a single form of registration for architects.
- Introduction of the following additional requirements:
  - completion of some form of approved professional development as a prerequisite for renewal of registration;
  - professional indemnity insurance (possibly) for all practitioners.
- Replacement of the present provisions for improper conduct by two disciplinary categories of unsatisfactory professional conduct and professional misconduct which would address failure to meet acceptable standards of both competence and integrity.
- Restriction of the use of the title architect and its derivatives to registered persons or practices to apply only in the course of providing architectural services so that irrelevant exemptions to the Act would no longer be required.
- Introduction of a register of architectural practices to regulate the use of the title architect by identifying the architects responsible for architectural work undertaken by the practice. The present requirement that one third of the principals be architects to be replaced by a provision that an architect must have full control of the architectural work, to allow greater flexibility of practice structure without compromising the standards implied by use of the title. Practices would be required to promote continuing professional development opportunities for their staff and, possibly, to have professional indemnity insurance.

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ARCHITECTS' CHECK LIST

Subscribers may recall that in Item 8 of Issue 4 (April 1989) of the Newsletter, a brief review was published of the Royal Australian Institute of Architects check list system for all in-office aspects of architectural design, documentation and project administration. This publication entitled **CHECKIT! - Project Quality Record** is a series of check lists covering these aspects of architectural practice and includes a build in progress reporting system.

The comment was made that this check list system should assist architects in the establishment and implementation of risk management.

The RAIA is now working on the second CHECKIT publication. This second check list based publication will deal with the on-site aspects of contract administration.

Further details will be provided when CHECKIT 2 is available.

-JT

PLAIN ENGLISH IN LAW IS AN ECONOMIC NECESSITY

- Professor Robert Eagleson, English Department, University of Sydney

This brief article by Professor Eagleson on the use of plain English is relevant to construction industry contracts, specifications and correspondence. It was first presented by Professor Eagleson in Canada and has been published in a Canadian legal journal.

There are several examples of plain English contracts in the industry. Perhaps, the best example is the ACEA's terms of engagement for engineering consultants. ACEA expressly instructed its lawyers to prepare a plain English contract and the end result is a model of simplicity and clarity. As a matter of committee policy, General Conditions of Contract AS2124-1986 were prepared in plain English. An argument could also be mounted that the JCC Contracts employ relatively simple and straight forward expression.

However, there are older contracts in common use in the industry which contain provisions expressed in a most complicated and cumbersome fashion; some of which defy logic and reason. One particular provision is a clause which covers the best part of a page of print in one sentence. Readers have commented that, by the time they have reached the end of it, they are not sure which country they are in, what century it is or what it was they were trying to do at the time that everything became confused. This provision requires a detailed phrase by (qualifying) phrase analysis, and even then readers have difficulty.

Engineers who enjoy a smug feeling at the expense of lawyers whilst reading the article should examine their own work. There are engineers who use English in a clear and precise manner. However, the written expression of many engineers leaves much to be desired. In correspondence and in reports, clear expression may not be critical but, in specifications and in contractual provisions, the consequences of unclear expression can be disasterous.

Some special conditions of contract, prepared by engineers, which were submitted to the SAA's AS2124 committee for consideration, on analysis, were found by lawyers on the committee to have the opposite meaning from that apparently intended by the draftsman. Another example: An head contractor failed in its attempts to rely upon a special condition dealing with industrial relations in a subcontract, as it was found to be meaningless. The intended obligation was expressed in the passive voice and unassigned to either party. Furthermore, the third sentence of this three sentence provision totally contradicted the first sentence.

I'm an English teacher, not a lawyer, and I approach you as one who wishes to work with you in the area of plain language. No only plain legal language, but plain bureaucratic language as well. Let's look at a passage from a letter from one firm of lawyers in Sydney to another firm of lawyers in Sydney:

> "We act for the Vendors herein and are informed by the relevant Agent in the sale that you act for the Purchasers.
>
> "Accordingly, we furnish herewith Duplicate Agreement for Sale of Land for your perusal and upon approval, signature duly by your clients as Purchasers ancillary to your appointing in mutuality with us exchange of such Agreement for conforming original part of the instant Agreement, signed duly by our clients, the Vendors ...."

Let me draw attention to the fact that this letter was written in February 1987. Not 1787. This is only a couple of years ago; it was written by a fairly large suburban legal firm to an even larger city one. I'm glad that it began "Dear Sir" and ended "Yours faithfully" because at least I can understand four words in it.

We need then to start thinking about the advantages and the values of plain language. As part of our exercise for the Victorian Law Reform Commission, which looked at whether or not legislation could be written in plain language, we rewrote the Takeovers Code.

It was reputed to be a very complicated piece of legislation. We subjected it to a test of 15 top takeovers experts in the country, and they all found that it was more accurate and easier to read than the original. There were three ambiguities in the original which had not been revealed because of the convoluted language.

We reduced the original from 80 pages down to 50 without leaving out any content and without affecting the accuracy. The people who had prepared the original have now looked at this plain language version very carefully and haven't been able to find a mistake in it.

What's interesting about this exercise is that lawyers who were involved in checking this material stated that it took them half as long to read the plain English version as it did to read the original.

Just think of all the time that would be saved in legal offices if we had documents prepared in a way that could be read easily. And then there are all the savings that happen for the public if legal firms could be more efficient in this way and if people could read the documents them-