

Deregulating Architects

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Editor

ISSUE 71 OF *ACLN* PUBLISHED IN FULL the Commonwealth Productivity Commission's report recommending removal of statutory restrictions on use of the term 'architect'. This recommendation has subsequently generated a lively debate between architects and the Commission. Since the proposal has wider implications for all professions, it is appropriate that the Commission's report and the response of the Royal Australian Institute of Architects should be placed in context.

GENESIS OF THE DEBATE

In 1992, as a result of the inquiry chaired by Professor Fred Hilmer, the National Competition Council was set up to assess, *inter alia*, the 'Government's progress in implementing competition reforms' and 'community education and communication of both specific reform implementation matters and National Competition Policy generally'.

The Productivity Commission was set up in 1998 as the Federal Government's principal advisory body on all aspects of microeconomic reform. The statutory functions of the Commission included an obligation to 'hold public inquiries and to report on matters related to industry and productivity'. The roles of the Council and the Commission appear to be complementary.

At the request of the Federal Government and on behalf of the States and Territories (save Victoria which had completed its own inquiry) the Productivity Commission conducted a national review of legislation regulating architects. The report, titled *Review of Legislation Regulating the Architectural Profession* (May 2000), was the result. In tandem with the work of the Commission, the National Competition Council has now published a discussion paper dealing with the regulation of *all* professions. There is little doubt that this paper will also generate debate. At least, this is the view of the President of the Council, Mr Graeme

Samuel, who is reported in the *Australian Financial Review* (8 September 2000) as saying:

My advice to all professional associations is to now get a copy of the architects report from the Productivity Commission and examine it very carefully... Wherever the word 'architect' is referred to, just substitute your own profession as a means of provoking some informed thinking about the issues relating to the professions.

The reader of the report and the discussion paper might well wonder whether either document properly acknowledges the distinction between a profession and a commercial activity. On this basis, it is relevant to examine the history and nature of professions.

WHAT IS A PROFESSION?

Professions are distinguished from other occupations by the nature of the services that they provide. Partlett, in his work *Professional Negligence* (Sydney: Law Book Company, 1985) describes professional services in the following terms:

The application of skill to the performance of a particular task or the rendering of advice; the skill springs from a body of knowledge accumulated by intellectual effort that is the product of formal training; and the performance of the tasks or the rendering of the advice is accompanied by ethical undertakings usually enunciated by a representative body of practitioners.

The definition incorporates the so-called learned professions of law and medicine, as well as the more recent arrivals on the professional scene including accountancy, architecture, engineering and quantity surveying. All professions seek to maintain the standards of conduct of their members by promulgating codes of ethics. Equally, professions have been at pains to identify the body of knowledge that is within the gift of their members.

Competition

The power to admit people to the professions remains the preserve of the professional bodies. The role of these professional bodies in the admission to the profession is recalled in Gilbert & Sullivan's operetta *HMS Pinafore* where the Lord High Admiral (who had acquired political prominence through the law) sings, 'I wore clean collars and a brand-new suit for the pass examination at the Institute' (the earlier name for the Law Society).

Historically, the evolution of professions enabled members to monopolise knowledge and, concomitantly, the power inherent in that knowledge. This seemingly privileged position has not been without criticism. As early as the 16th century Shakespeare has a character say, 'The first thing we do, let's kill all the lawyers', *Henry VI, Pt 2* (Act IV Scene ii).

THE SO-CALLED LEARNED PROFESSIONS

Law and medicine clearly fall into this category and it is doubtful if any others can make such an historical claim. In earlier times the clergy would have had an unassailable claim, however the decline in influence of the Church and the secularisation of society have diminished the clergy's role. Law is perhaps the oldest of the professions, with its beginnings to be found in the pleaders and attorneys in the courts of 12th-century England. Their original role was in fact that of translator because the language of the courts was Norman French. Solicitors were first organised on a professional basis with the grant of Royal Charter to the English Law Society in 1845.

Prior to 1832, there was no regulation of the medical profession and anyone – qualified or not – could practise. The first regulation came when the Provincial Medical and Surgical Association was founded in 1832. A parallel development of even greater antiquity was the evolution of surgeons. During the 16th and 17th centuries, barbers and surgeons maintained a somewhat uneasy relationship, no doubt based on the similar *modus operandi* of each of the callings. The 18th century witnessed surgery transforming itself into a proper scientific discipline. This process was facilitated by the genius of John Hunter who raised surgery from 'a mere technical trade' to its position as equal to other medical specialties. In 1755 the surgeons separated from barbers, forming the Company of Surgeons and moving to new premises close to the former Newgate Prison,

from whence a supply of cadavers was available to enable the putative surgeons to hone their anatomy skills. In 1800 the Company of Surgeons was granted Royal Charter and became the Royal College of Surgeons.

Although the historical discussion here has been confined to medicine and law, it is fair to suggest that all of the recognised professions have an intellectual tradition of value. No doubt professional bodies do act in the interests of their members, in so far as they can admit new members to the profession. Even so, it has not been suggested in the course of the debate that the quality of persons thus admitted is wanting. The true position is to the contrary. Whilst the delivery of affordable services is a desirable aim, the quality of those services is of equal significance. Ultimately it is the prospect of reasonable rewards that attracts competent people to the professions.

It is with these caveats that the following National Competition Council discussion paper should be read. Equally, the executive summary of the Royal Australian Institute of Architects' submission to the Productivity Commission (which also follows) is an example of the *apologia* that all professions might soon be called upon to articulate. ■