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BRCWG Secretariat
Deregulation Group
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600

To whom it may concern

Future COAG Regulatory Reform Agenda

The Australian Institute of Architects (the Institute) welcomes the opportunity to make this submission to the Business Regulation and Competition Working Group (BRCWG). The Institute is an independent, national, member organisation with approximately 11,000 members across Australia and overseas. The Institute exists to: advance the interests of members; their professional standards and contemporary practice; and expand and advocate the value of architects and architecture to the sustainable growth of our community, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

We wish to raise two key issues in relation to the BRCWG’s consideration of options for the future COAG regulatory reform agenda. The first relates to the need for further focus and activity on cities strategic planning and the second on the proposal that a national register for architects be considered under the National Occupational Licensing Scheme.

Strategic Planning for Australian Capital Cities

The COAG Capital City Strategic Planning Systems Agreement in December 2009 was a well received initiative, welcomed for its objective to ensure our capital cities are well placed to meet the challenges of the future, and specifically “to ensure Australian cities are globally competitive, productive, sustainable, liveable and socially inclusive and well placed to meet future challenges and growth”.

We understand that by 1 January 2012 all States and Territories will have plans in place that meet COAG’s nine identified criteria for future strategic planning of capital cities, and that these plans will determine future Commonwealth funding for infrastructure.

We understand that the COAG Reform Council’s work to date to review capital city strategic planning systems against the COAG criteria is due to be finalised by the end of this year, and we are concerned that there does not seem to be any commitment to ongoing activity in this important area of public policy which impacts greatly on the productivity of our nation.
As the Australian Minister for Infrastructure Anthony Albanese said in his press statement on 20 October 2011 when releasing the 2011 update of the State of Australian Cities report:

“As one of the world’s most urbanised societies, Australia’s future economic prosperity and continuing social cohesion will depend largely on how successful we are at making our cities work better. Already they are home to three quarters of Australians and generate around 80 per cent of our national wealth.

This task is given even greater urgency by the looming long term challenges of climate change and a growing, ageing population. For instance, in the absence of a new approach, traffic congestion alone is set to cost Australian businesses and families more than $20 billion a year by the end of this decade.

But one thing is certain: building more productive, sustainable and liveable cities will require the involvement of and cooperation between all the levels of government from the local town hall up to and including the national parliament.”

We believe that the Minister’s statement points to an ongoing role for COAG in relation to cities. It is imperative both to address the challenges our cities are facing and to continue the important work having been undertaken to date, while recognising the need for indicators and targets.

We submit that the next stage of this agenda should entail the COAG Reform Council working with industry and other relevant stakeholders to develop indicators relating to productivity, liveability and sustainability of our cities. Measuring against these indicators would provide an evidence base which could be used to both track ongoing performance of our cities and build policy to more effectively address key issues as they arise.

There has been a growing awareness amongst governments and the community that our cities play an important role our nation’s productivity, liveability and sustainability but are facing a number of key challenges. We think it would be highly remiss if the COAG Reform Council was not tasked with a further role in this area post 2011.

We also believe that a continuing role for the COAG Reform Council in relation to this topic aligns with one of the strategic themes agreed to by COAG earlier this year to guide its agenda for the next three years; namely the strategic theme of ‘a sustainable and liveable Australia’.

Enhancing Workforce Mobility - National Register for Architects

The Future COAG Regulatory Reform Agenda – Stakeholder Consultation Paper queries whether incorporating professions such as architects within the National Occupational Licensing Scheme would provide overall net benefits for business. The Institute generally agrees that the profession of architecture is one where the community would benefit if mobility of architectural businesses was facilitated under the national licensing scheme.

We called for a National Register for architects in our submission to the Productivity Commission in 2010. We envision that a National Register would, under the National Licensing scheme, operate such that architects register and pay a fee in their home state which automatically entitles them to placement on a national register, thus allowing
architects to work in all Australian state and territories without having to complete separate registration processes nor pay registration fees across multiple jurisdictions. While the current Mutual Recognition Act 1992 (Cth) goes some way to alleviating this, by permitting an architect to seek recognition in another state or territory, it does not of itself guarantee that the recognition will be granted. Under the Act, a registration authority may refuse recognition if it does not consider that the ‘occupation’ is equivalent and the difference cannot be met by imposing conditions.

In our earlier response to the Productivity Commission’s review of mutual recognition schemes in December 2008, the Institute also called for the establishment of a National Register for architects, and expressed our support for the Commission’s draft recommendation that the Mutual Recognition Act be amended to clarify that continuing professional development (CPD) apply equally to all registered persons within an occupation including those registered under mutual recognition. We note that the Commission’s January 2009 report upheld this recommendation.

There is a potential for inconsistent and burdensome duplication of registration requirements acting against cross-jurisdictional harmonised legislation. By way of example, the NSW Board of Architects has expressed the view that any architect registered there must comply with the NSW CPD requirements of the Board, irrespective of their home state or territory CPD requirements.

The Productivity Commission in its August 2010 report titled ‘Annual Review of Regulatory Burdens on Business: Business and Consumer Services’ upheld the Institute’s request and recommended that the Australian Government should work with State and Territory Governments to implement a national register for architects”. (Rec 4.1)

With this background, the Institute agrees that the potential for national licensing alone may be diminished by “conduct” and other requirements that remain inconsistent between jurisdictions¹. Section 160 of the Occupational Licensing National Law Act provides that other occupations may be brought under the scheme by means of regulations made by the Ministerial Council. Such regulations can be very comprehensive, and ostensibly replace existing occupational licensing legislation in each jurisdiction as the national regulations.

The Consultation Paper suggests further reform could bring harmonisation in the areas of information, standards and behaviour, discipline and penalty, and management and supervision. The Institute believes that on a principles based approach, nothing less will truly achieve the aims of workforce mobility and satisfaction of reasonable consumer expectations.

As the Institute understands the operation of section 161(2) of the Act, the Ministerial Council cannot be prevented by one or more jurisdiction from adopting national regulations to govern an occupation not already covered by clause 3.5 of the Inter-Governmental Agreement, unless immediately before it does so, the occupation was not licensed in one or more jurisdictions and the respective Ministers disagree that it ought now to be licensed. This does not prevent regulations being made for the jurisdictions who agree that the occupation should be subject to ‘national’ licensing.

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¹ B2 of the BRCWG ‘Future COAG regulatory Reform Agenda Stakeholder Consultation Paper’
The profession of architecture is regulated by an Architects Act in each jurisdiction at present, and subject to the unlikely withdrawal of one or more Architects Acts, there is no barrier to the Ministerial Council nationalizing the registration of architects.

While as noted above, a principles based approach would suggest that what is really required for perfect cross-border transitions is uniform legislation, in the case of architects, the general provisions for registration of individual architects in each jurisdiction are already closely aligned, because each jurisdiction’s statutory registration authority adopts similar registration criteria, based on approved tertiary education courses, in practice experience, and post experience registration examinations. The effect is that any architect registered under an Architects Act in a jurisdiction is deemed to have equivalent qualification, as is required by any other Architects Acts.

At the time of this submission, all Architects Acts except Tasmania\(^2\), have been amended or replaced as a result of an Inter-Government Agreement\(^3\) which followed the Productivity Commission’s report\(^4\) in 2000.

Despite differences noted as to CPD, for example, in the Institute’s opinion, the Architects Acts, introduced in the jurisdictions other than Tasmania over the period 2002 – 2010, are reasonably consistent and satisfactory as the basis for individual registration in order to meet the intent of the Acts to protect consumers from:

- persons insufficiently qualified and/or experienced who may purport to have reached the required standard by use of the term architect, and
- architects whose conduct falls below required standards for providing architectural services

As for national registration of individual architects, we understand that the Boards that administer the Architects Acts in each jurisdiction are, through their collective membership of the Architects Accreditation Council of Australia (AACA), close to initiating a national register scheme. If adopted, we understand it would overcome most of the limitations of the Mutual Recognition Act and promote the seamless transition of individual architects across jurisdictions.

We note that the Occupational Licensing National Law Act provides in s.160(2)(r) for transitional provisions between regulations for national occupation and existing jurisdictionally based legislation and that by implication, parts of the existing legislation may remain operative while other parts become subject to new regulations under the Act.

The Institute considers it is unnecessary in respect to the aims of the Act, for new regulations at this time to deal with matters of qualifications, experience, registration, conduct or discipline, at least in the shorter term. We think this would be unnecessarily disruptive to a profession which is in the process of, variously according to jurisdiction, adjusting to new or recently amended legislation. Provided the AACA national register is

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\(^2\) Tasmania’s “Workplace Standards” has commissioned a review of the current Act, following which WorkPlace Standards is expected to provide its advice to the relevant Minister.

\(^3\) “States and Territories Working Group on a Coordinated Response to the National Competition Policy Review of Legislation Regulating the Architectural Profession” – chaired by Mr Ted Smithies of NSW Department of Public Works and Services

\(^4\) Productivity Commission 2000, Review of Legislation Regulating the Architectural Profession, Report no. 13, AusInfo, Canberra
initiated, the Institute does not see the need for regulations providing for national registration of architects.

However, the Institute perceives that the most significant present barrier to cross-border mobility and the efficiencies this can bring to the work of architects is not the jurisdictional variation in the registration of individuals, but the ability of architectural practices (partnerships, companies and other business entities) to obtain registration to practice across jurisdictions. The Mutual Recognition Act does not provide its benefits to Practices, but by its terms\(^5\), to individuals. National licensing intended to remove the inefficiencies apparent in that legislation will not of itself solve cross-border mobility of Practices.

By way of example, in Queensland, a Practice is not registrable per se, but a Practice with an office and at least one registered architect employee working at that office in Queensland is permitted to operate as an architect. In contrast, Victoria requires any Practice to register as an architectural practice, in addition to the individual registration of those who own, run, or have control of the Practice. Using this example, the result is that a Practice legally providing architectural services to a project in Victoria, cannot necessarily comply easily with Queensland law in providing architectural services to a project there, and vice versa.

One potential disadvantage of differing jurisdictional approaches, is that as technology develops and Practices attain greater capacity to provide architectural services to projects from afar, any requirement for physical presence of individuals in the jurisdiction is inconsistent with this trend.

For these reasons we consider that if the Ministerial Council were to bring the regulation of architects within the Act, its intervention would be most effective if directed at harmonising and streamlining the transition of Practices in the shorter term, while leaving the regulation of individuals as to their conduct in the hands of the current Architects Acts and jurisdictional transition of individuals in the hands of the AACA arrangement with its member Boards.

Yours sincerely

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CEO

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\(^5\) Section 18, Mutual Recognition Act 1992 (Cth)