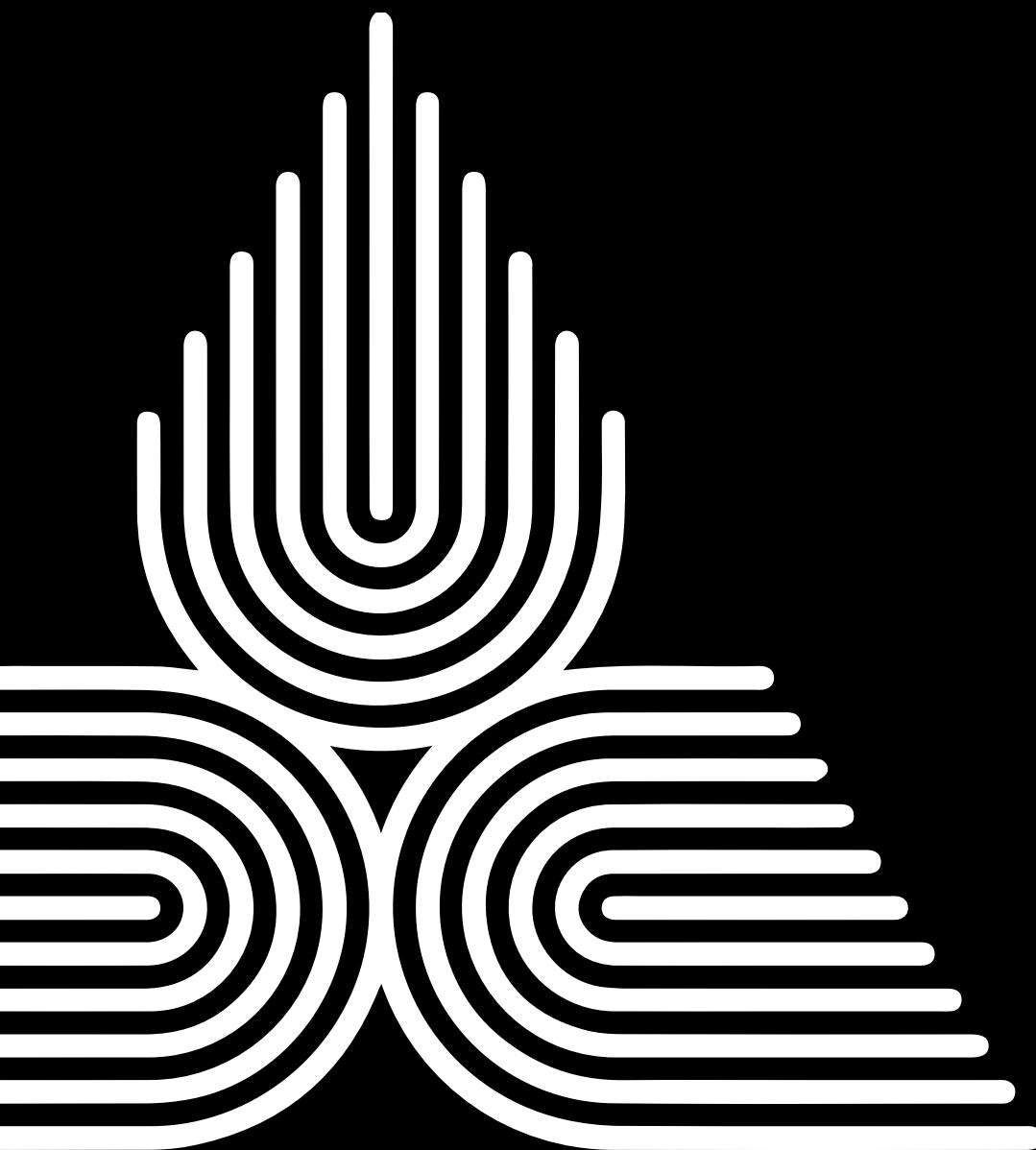


Australian Institute of Landscape Architects

**Registration, regulation and
legal recognition of Landscape
Architects in Australia**



Acknowledgement of Country

The AILA acknowledges and respects Aboriginal and Torres Strait Islander Peoples of Australia, as the traditional custodians of our lands, waters and seas.

We recognise their ability to care for Country and their deep spiritual connection with Country.

We honour Elders past and present whose knowledge and wisdom ensure the continuation of Aboriginal and Torres Strait Islander cultures.



Australian Institute of
Landscape Architects

Registration, regulation and legal recognition of Landscape Architects in Australia - Discussion Paper

REV D September 2021

REV C June 2021

REV B August 2020

REV A October 2019

Australian Institute of Landscape Architects

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Introduction

The vision and mission of the Australian Institute of Landscape Architects (AILA) is to lead a dynamic and respected profession: creating great places to support healthy communities and a sustainable planet.

The discussion paper has been prepared to outline some of the legislative changes across Australia and some of the issues and opportunities facing the Australian Institute of Landscape Architects and our members in maintaining self-regulation versus, pursuing independent regulation, and/or seeking legal protection of the title Landscape Architect.

It reflects discussions from AILA Board meetings and previous discussions with AILA Chapter Presidents and AILA Committee Chairs. The discussion paper has been developed to ensure currency in relation to the examples listed, to generate a common understanding and to facilitate broader membership discussion and engagement.

This paper does not present a preferred option of the Board, but rather pragmatic options to commence discussions on future directions.

AILA Strategic Context

AILA 2018-20 Strategic Plan

The AILA 2018-20 Strategic Plan outlined the following relevant actions:

Strategic Pillar	Strategic Action
Membership	<p>Restructure and grow the membership base</p> <ul style="list-style-type: none">• Review and enhance a rigorous registration process for those seeking a registered status. <p>Enhance our continuing professional development program</p> <ul style="list-style-type: none">• Develop a national policy and framework for delivery of high quality accessible CPD Programs

- AILA's 2018-2020 Strategic Plan was prepared in full consultation with members.
- Membership categories have been expanded.
- Registration collateral was improved however the registration process has not significantly changed since that time.
- CPD is delivered by AILA across Australia and by State Chapters. Some improvements have been made to the Continued Professional Development (CPD) program delivery in recent years, including an updated CPD Policy and increased accessibility through on-line content.

AILA 2021-22 Strategic Plan

The AILA 2021-22 Strategic Plan outlines the following relevant objectives:

Strategic Pillar	Strategic Objective and Targets
Sustainable AILA	Objective: AILA continues to review and improve its Governance framework
Advocacy	Objective: The role of Landscape Architecture is understood and respected by all levels of Australian government
Education	Objective: Australia's Landscape Architecture programs, and student and academic communities are sustained and bolstered
	Objective: AILA's CPD program meets the needs of a growing and increasingly complex profession
	Target: AILA revised CPD Framework is approved by the Board
Membership	Objective: AILA understands and is responsive to the needs of its members
	Target: AILA registration is sought after by Landscape Architects and valued by stakeholders
Profile	Objective: The role of Landscape Architecture is understood and respected by built environment professionals and the communities in which we live

- The 2021 AILA Strategic Plan was developed through a membership engagement process noting legal recognition and protection of title did not receive mention as a priority.

AILA Superintendence

Responsibilities of the Board

This discussion paper presents context for the options presented herein, in relation to the legal protection of the title Landscape Architect, to maintaining an AILA self-regulated registration system or to pursuing an independently-regulated registration scheme.

This presents potential changes in governance therefore it is important to outline the responsibilities of the AILA directors in advising members on the pros and cons of any proposed governance changes, particularly if those changes may not be in the interest of AILA as a company.

Directors are elected and appointed as individuals and are not elected or appointed as representatives of any specific interests and must therefore act for the benefit of AILA as a whole and not in the interests of other bodies or persons and to not allow personal interests, or the interest of any associated persons, that conflict with the interests of AILA.

The Australian Institute of Landscape Architects Ltd. (AILA) is a company limited by guarantee formed for the benefit of the public by the promotion of the stated Objects of the Company.

The AILA Board of directors are responsible for the overall governance and strategic direction of AILA and provide "overall superintendence" of AILA, overseeing both performance and compliance in accordance with the organisation's purpose and objectives.

Therefore in consideration of the options presented in this paper the directors were required to act in good faith, in the best interest of AILA and for a proper purpose; and to use reasonable care and diligence in the exercise of their powers.

AILA Constitution

For the purposes of this discussion the following relevant clauses that pertain to membership, the membership categories, and membership responsibilities, as defined in the AILA Constitution, are referenced below.

9 MEMBERSHIP

9.1 Membership Categories and Qualifications

The Members of the Company are:

- (a) Full Members
 - (i) Registered Landscape Architect
 - (ii) Registered Landscape Architect Fellow
 - (iii) Registered Landscape Architect Retired
- (b) Other Members
 - (i) Graduate Members
 - (ii) Student Members
 - (iii) Affiliate Members

9.2 Full member category and eligibility

- (a) Full Members
 - (i) Full Member - Registered Landscape Architect
 - (a) A recognition as a Full Member - Registered Landscape Architect is bestowed on persons who meets the eligibility criteria as determined by the Board from time to time.
 - (b) Member rights and privileges of this category are pursuant to Article 9.3 and as otherwise determined by the Board from time to time.
 - (c) In exceptional circumstances the Board is able to bestow this category of membership on a person who may not have met the eligibility criteria
 - (i) Full Member - Registered Landscape Architect Fellow
 - (a) A recognition as a Full Member - Registered Landscape Architect Fellow is bestowed on persons who are Registered Landscape Architects recognised as having an ongoing "honorary distinction" within AILA and bestowed on persons who meets the eligibility criteria as determined by the Board from time to time.

- (b) Persons must not be admitted to this grade of membership unless they are qualified to be admitted as Registered Landscape Architects.

- (c) Recognition as a "Fellow" accrues member rights and privileges of this category pursuant to Article 9.3 but no additional Member rights and privileges (apart from post nominal recognition) unless otherwise as determined by the Board from time to time.

- (i) Full Member – Registered Landscape Architect Retired

- (a) A recognition as a Full Member - Registered Landscape Architect (Retired) is bestowed on persons who meets the eligibility criteria as determined by the Board from time to time

- (b) Persons must not be admitted to this grade of membership unless they are qualified to be admitted as Registered Landscape Architects.

- (c) Recognition as "Retired" accrues membership rights and privileges of this category pursuant to Article 9.3 but no additional Membership rights and privileges unless otherwise as determined by the Board from time to time.

9.3 Application for Full Membership

- (a) A person is eligible to apply for membership as a Full Member of the Company if they have made an undertaking on the part of the applicant to:
 - (i) be committed to the objects and values of the Company
 - (ii) be bound by the Constitution; and
 - (iii) make an application for membership in the form approved by the Board from time to time.

A person becomes a Full Member, upon approval of their application by the Board in accordance with Article 9.8(c), and the payment of the membership fee.

9.4 Other Members category and eligibility

- (a) Graduate Members
 - (i) A recognition as **Graduate Member** is bestowed on persons who hold a recognised certification and who meets the eligibility criteria as determined by the Board from time to time."
 - (ii) Recognition as a "Graduate" accrues all the rights and privileges pursuant to Article 12.7, or as otherwise determined by the Board from time to time.
- (b) Student Members
 - (i) A recognition as **Student Member** is bestowed on persons who are engaged in studies associated with Landscape Architecture approved by the Board from time to time
 - (ii) Recognition as a "Student" accrues all the rights and privileges pursuant to Article 12.7 or as otherwise determined by the Board from time to time.
- (c) Affiliate Members
 - (i) A recognition as **Affiliate Member** is bestowed on persons who are ineligible to become Registered Landscape Architects and who meet the eligibility criteria as determined by the Board from time to time.
 - (ii) Recognition as an "Affiliate" accrues all the rights and privileges pursuant to Article 12.7 or as otherwise determined by the Board from time to time.

9.5 Application for Other Membership

- (a) A person is eligible to apply for membership as a Graduate, Student, Affiliate member of the Company if they have made an undertaking on the part of the applicant to:
 - (i) be committed to the objects and values of the Company
 - (ii) be bound by the Constitution; and
 - (iii) make an application for membership in the form approved by the Board from time to time.

A person becomes an Other Member, upon approval of their application by the Board in accordance with Article 9.8(c), and payment of the membership fee.

9.6 New membership categories

- (a) The Board is able to determine further classes of membership as deemed necessary from time to time, and these are to be fully defined in their appropriate governing policies.
- (b) Subject to the Corporations Act and the rights of particular categories of Members, the Company [AILA] may vary or cancel rights of Members in that category:
 - (i) by a Special Resolution passed at the Company's [AILA] General Meetings; or
 - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may, pursuant to 12.18, be cast by eligible voting members.

Title Protection + Recognition

In Australia it is important to distinguish between the recognition of different professions, the requirements of registration, and the legal protection of titles. Ultimately the use of a title should not lead a consumer to believe a practitioner holds specialist registration that they do not hold; or infer that they are more highly skilled or qualified than may be the case.

The title Landscape Architect in Australia

The title 'Landscape Architect' is not protected by legislation.

The title 'Registered Landscape Architect' is protected.

- AILA holds the trademark for the title 'Registered Landscape Architect'.
- In Australia there is no legal requirement for Landscape Architects to hold membership with the Australian Institute of Landscape Architects.
- In Australia it is a requirement for Registered Landscape Architects to hold membership with the Australian Institute of Landscape Architects.

The title Engineer in Australia

In Australia the title 'Engineer' is not protected by legislation.

- Registration of engineers is now mandatory in some states across Australia. If engineers are practising in New South Wales, Victoria, or Queensland, they may need to be assessed against competency standards for mandatory registration.
- In Australia, states and territories are responsible for statutory registration of engineers. Statutory registration ensures engineers meet professional conduct, education, training, and competency standards.
- There is no legal requirement for engineers to hold membership with Engineers Australia.

The title 'Architect' in Australia

In Australia the title 'Architect' is protected by legislation.

- The title Architect is restricted in use by law in all Australian States and Territories to practitioners registered with the registration Boards established under State Acts of Parliament.
- In Australia there is no legal requirement for Architects to hold membership with the Australian Institute of Architects.
- To work as an architect in Australia, you must be registered with the relevant state/territory Architect's Registration Board.
- The Act protects the title 'Architect' and provides that a person must not claim or hold their self out to be an "architect", or allow their self to be held out as an "architect", unless the person is registered with the Board. The Act also provides that a person must not use the title "architect" or "registered architect" unless they are registered with the Board. A reference to a "person" in these sections also includes a company.
- Section 114(2) of the Act also provides that a person who is not a registered practising architect must not use any of the following words to advertise or otherwise promote their services unless the services are to be provided using a registered practising architect.: "architectural services"; "architectural design services"; or "architectural design".
- Because some companies use the term "Architect" or "Architects" and do use registered architects to supervise the architectural work, the Act also provides that these companies may notify the Board regarding details about the company, its places of business and the names of the responsible architects to ensure they do not offend against the Act.
- It should be noted that the NSW Act 2003 is the 89th version of the Act, after the legislation came into effect in the 1920s.

Context: Consumer Protection

Following public scrutiny of design and construction issues arising from the Grenfell Tower Fire Disaster in the UK and the Opal Tower building failure in Sydney, state authorities have been scrutinising the effectiveness of their design and construction licencing processes, particularly in line with the *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* by Shergold and Bronwyn Weir (February 2018).

The report can be accessed through the link below:

https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment - building_confidence.pdf

What is clear is that the recognition of building practitioners is not inextricably linked in all instances to legal protection of title or independent regulation and that there are inconsistencies between jurisdictions across Australia.

The following pages outline examples of the differences in the recognition of Landscape Architects in different states in regard to legislative changes.

Example NSW Government's State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development [SEPP 65] (NSW)

Consultant category does include Registered Landscape Architects

The NSW Government in an effort to simplify the state's planning system, is consolidating several existing design controls, introducing new design and place principles into all types of developments, including precincts, a focus on design qualifications of consultants, and introducing the recognition of the qualifications of:

- A Registered Landscape Architect - will be required for the design of all open space greater than 1,000m², and
- A qualified designer (i.e., a Registered Landscape Architect, urban designer, architect with master planning skills), will be required for master planning of all precincts and significant development. Developers will need to provide a certificate from their designers to confirm they have the requisite qualifications.

Example National Registration Framework for Building Practitioners

Does not include Landscape Architects as a specific discipline/expert role for building practitioners

The Building Ministers' Forum (BMF) authorised an assessment of the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. The resulting Building Confidence Report (BCR) highlighted shortcomings in the implementation of the National Construction Code (NCC) and made 24 recommendations to address these issues. The predominant goal of the BCR is to enhance public trust and confidence in the building industry. This can be achieved through a national best practice model of building and construction standards, that will strengthen the effective implementation of the NCC and protect the interests of those who own, work, live, or conduct their business in Australian buildings. The BCR highlights the need for action in the building industry, including the need for a more effective building practitioner registration scheme.

Recommendations one and two of the BCR propose the registration of building practitioners involved in the design, construction, and maintenance of buildings, and that each jurisdiction prescribes consistent registration requirements covering knowledge of the NCC, competency and experience, insurance and financial viability, and integrity. A discussion paper on a draft National Registration Framework (NRF) for Building Practitioners has been developed in response to BCR recommendations one and two.

The NRF proposes an aspirational, long term view for building practitioners that allows for future proofing of the building industry. The purpose of the NRF is to achieve national consistency in the registration of building practitioners across the jurisdictions to achieve significant economic benefits, improve the efficiency of the registration process through options such as mutual recognition and enhance public confidence in the building industry. The NRF covers core disciplines in the fields of building production (design, checking, construction and inspection) building approval (approval to build, approval to occupy) and

coordination (project management). The NRF is based on registration categories, with specific disciplines within each category. Expert roles are included by endorsement within the appropriate discipline.

The National Registration Framework will be presented to Building Ministers for endorsement in late 2021 and is expected to be published on the ABCB website shortly thereafter.

Automatic Mutual Recognition of Occupational Registrations (AMR) scheme

On 1 July 2021, a new national Automatic Mutual Recognition of Occupational Registrations (AMR) scheme commenced in New South Wales, Victoria, the Australian Capital Territory and the Northern Territory. The scheme will progressively commence in other states.

AMR is designed to cut red tape, do away with additional fees and paperwork, and create a more mobile workforce to help businesses grow, enable workers to take up jobs and contribute to Australia's economic recovery and resilience.

The new scheme will apply for a limited number of occupations initially and include more occupations as Australia transitions to the new scheme.

AMR allows a person who is licenced or registered for an occupation in one jurisdiction to be considered registered to perform the same activities in another jurisdiction, without the need to go through further application processes or pay additional registration fees.

This legislation is the first step of a major national reform. As part of the transitional period, a limited number of occupational registrations are currently within the AMR scheme in New South Wales, Victoria, the Australian Capital Territory and the Northern Territory. Licensed workers from one of these jurisdictions intending to work in another one of these jurisdictions may be able to take advantage of the reform.

Other states are expected to implement AMR over the coming year.

To be eligible for AMR, individuals must hold a registration or licence in their home state or territory that covers the activity they intend to carry out in a second state or territory. A worker's home state is their primary place of residence or work. When working in a second state, a person must provide evidence of their substantive registration and their home state if asked by a state or territory regulator.

State and territory regulators may require individuals to meet additional requirements to be eligible. Such requirements are limited to:

- Notification to the second state regulator of intent to carry out the activity,
- Evidence of meeting and maintaining financial public protection requirements (such as, insurance, fidelity funds, trust accounts, minimum financial requirements), and
- Evidence of satisfying and maintaining a working with vulnerable people character test.

Having met the requirements, a person is entitled to automatic deemed registration (ADR) to work in a second state. This means they are taken to be registered or licensed to carry out the activity in the second state or territory. A person is not issued with a second registration or licence and does not pay for or have to renew the ADR.

Failure to meet any requirement means that the person is not authorised to carry out the activity in the second or further state or territory.

Example Queensland Building and Construction Commission (QBCC)

Does include a category for Landscape Architects for design.

Does not include a suitable licence category for Landscape Architects for construction

Key Issues:

- AILA has received advice from QBCC and the State Government that Landscape Architects and Designers must obtain a QBCC licence to be engaged as a principal consultant for the Contract Administration phase on any project which has a built component of \$3,000 or more (including fencing, retaining walls, landscape structures).
- QBCC do not however offer a suitable licence category for Landscape Architects: the project management licence only applies to buildings and requires building experience.
- Landscape Architects often act as principal consultant on major Landscape projects, often with Engineers and Architects (working under their own registration and licence schemes) as sub-consultants for minor structures.
- Landscape Architects are currently registered through AILA's self-regulation Registered Landscape Architects programme.
- No other state or territory government in Australia requires Landscape Architects to be licenced for any aspect of their practice.
- The trigger for QBCC's interest was a case where a Managing Contractor was found to be not liable to pay a Landscape Contractor on the basis that an unlicensed Landscape Architect certified the progress claim - a task requiring a QBCC licence.
- Landscape Architects have been able to provide Contract Administration services by sub-contracting a QBCC licenced Project Management firm under the Head Contractor exemption.

- This exemption was removed in July last year, a proclamation date is yet to come into force, however this would remove the only current avenue for Landscape Architects to perform Contract Administration in QLD legally.

Queensland Government Response to date:

- Has advised that the Project Management subcommittee of the Ministerial Construction Council will be reviewing the issue of Project Management and QBCC licence, but this subcommittee has not yet commenced.
- Referenced Federal ABCB process on professional registration as a reason for not addressing this issue, however the Federal ABCB process is silent on Landscape Architects and their role.

(<https://consultation.abcb.gov.au/engagement/dp-national-registration-framework/>)

AILA's Advocacy: Requested Changes to the QBCC Regulation:

Add a clause to Schedule 1 "Work that is not Building Work" in the QBCC Regulation to align with allied professions such as Architects and Engineers:

Example:

- Landscape Architecture - work performed by a Landscape Architect in the Landscape Architect's professional practice, including, for example, carrying out Contract Administration for Landscape works.

If required, also add clauses to Schedule 2 Classes of Licence (Noting the "Technical Qualifications for Licencing" document will also need to be updated to reflect the new licence classes)

Example:

- New licence classes:
 - Part 61A Landscape Design Project Management (Residential) Licence
 - Part 61B Landscape Architectural Project

Example Design and Building Practitioners Act and Regulation (NSW)

Definition of Design and Building Practitioners **does not include Landscape Architects**

The following example does not include Landscape Architects, but does have implications for Landscape Architects and it is anticipated that Landscape Architects may be included in the next tranche of legislation in relation to building practitioners.

The NSW Government developed The Design and Building Practitioners Regulation 2020, based on the underpinning legislative framework created by the Design and Building Practitioners Act 2020 (NSW) (DBP Act).

A summary of some of the objects of the Bill include to:

- Require compliance declarations for regulated designs to be provided by registered design practitioners and principal design practitioners who provide designs for certain building work (applicable building work),
- Impose on building practitioners who do applicable building work an obligation not to carry out the work unless regulated designs have been obtained and compliance declarations provided,
- Establish a duty of care owed by persons who carry out construction work relating to certain buildings to take reasonable care to avoid economic loss caused by defects arising from the work,
- Establish a registration scheme for design practitioners, principal design practitioners and building practitioners who are subject to compliance declaration requirements and to establish insurance requirements for registered practitioners,

The Bill is based primarily on the requirements of the Building Code Australia (BCA) and the Australian Standards (AS) and has been drafted with little understanding of the role of Landscape Architects in the design and construction industry. Concept papers released for consultation clearly identified the role of the Architects and Engineers but did not reference Landscape Architects.

The NSW AILA Chapter formed a working group to review and advocate for Landscape Architects. They identified the following key issues that relate to the topic of registration and recognition.

Key Issues:

- Landscape Architects do not need to be registered Design Practitioners (DP) but are required to support the DP by providing clear and concise documentation. AILA will continue to work with the Australian Institute of Architects (AIA) and to use the tools developed by AIA to ensure landscape documentation conforms and is produced to a high standard.
- Landscape Architects are required to provide 'compliance declaration certification' to the DP that the documentation complies to relevant BCA and Australian Standards. More clarification is required around the responsibility and liability around 'compliance declaration' of the documentation on the Landscape Architect.
- Clarification of required Accreditation Pathways for those existing discipline practitioners not considered Registered Design Practitioners, and noting the NSW Government acknowledge there is an issue and a need to establish a transitional pathway and timeline for these disciplines.

Example Building Reform Expert Panel (VIC)

Definition of Building Practitioners **does not include** Landscape Architects

The Victorian Government has established the Building Reform Expert Panel to lead its review of the building legislative and regulatory system. The Expert Panel has been asked to advise on the changes necessary to ensure that Victoria's building regulatory system:

- Delivers safe, compliant, durable, affordable and sustainable housing and buildings efficiently and effectively;
- Protects consumers and improves confidence in the industry and regulators;
- Supports skilled and experienced practitioners to carry out compliant and safe practices; and
- Supports regulators to effectively and efficiently enforce compliance

A staged approach to the review, comprising three stages, will be delivered over two years from 2021. This approach enables significant changes to start to be implemented in 2021, with further reforms to be delivered in 2022 and, finally, a new Building Act in 2023.

The Panel has decided to include the following aspects of the building regulatory system in Stage One:

- Practitioner registration
- Building approvals
- Regulatory oversight
- Consumer protection

These aspects are included in Stage One because they are priority areas for reform that will help to underpin a robust and growing construction sector at this critical time in economic recovery.

In Stage Two, the Panel will identify opportunities to improve building information, regulator tools and powers, statutory duties of care as well as consider any further improvements in the Stage One reforms.

Finally, in Stage Three, the Panel will consider the legislative framework for the new Building Act.

The Framework focuses heavily on the relationship between regulation and registration and quality-built outcomes and the desire to improve practitioner competence across all disciplines in Victoria by adopting competence frameworks and improving education, training, and support.

The discussion paper's broad intent includes, to:

- register all practitioners who undertake or provide direct input into regulated work
- develop specialist practitioner categories and/or classes for complex and high-risk work
- require sign off from appropriately registered practitioner for each practitioner class, whether it be advice, design, or construction.

As a priority, this two-step procedure will be applied to the following practitioner categories and the accompanying classes:

- Building Surveyors and Building Inspectors;
- Design practitioners (including Architects and Draftspersons);
- Builders; and
- New categories of fire safety practitioners.

Scopes of work will then be assessed and aligned for the remaining practitioner categories and accompanying classes:

- Site supervisors;
- Project managers;
- Quantity surveyors; and
- Plumbers

Draftsperson

- Must hold at least two years practical experience obtained in the last seven years in the following areas of experience:
- Prepare Class 1 technical building design (architectural) drawings

- Prepare Class 2 to 9 technical Building design (architectural) drawings
- Initiate the application for building permits
- Project administration and building contract administration
- Brief and coordinate secondary consultants

There are three classes of draftsperson

This category of building practitioner has three classes:

- Building Design (Architectural)
- Building Design (Interior)
- Building Design (Services)

The panel is analysing submissions with an engagement summary to be published mid-2021.

Example Construction Supplier Register (VIC)

Register **does include** Landscape Architects as a pre-qualification category

The Construction Supplier Register is an open pre-qualification scheme for suppliers of construction works and services, interested in Victorian Government building and construction projects.

The Construction Supplier Register pre-qualification scheme lists pre-qualified suppliers that have demonstrated they possess the necessary expertise, management systems and financial capacity to undertake works or construction related services for Victorian Government construction projects.

Suppliers listed on the Register are eligible to be invited to tender for Victorian Government construction projects.

The Register is structured into two main sections:

- Suppliers of construction work, such as builders
- Suppliers of construction related services

This pre-qualification scheme operates in accordance with the Ministerial Directions and Instructions for Public Construction Procurement in Victoria.

The Construction Supplier Register lists the entity's details and the pre-qualification category currently awarded to the entity. The information can be searched by:

- Name of the entity
- Pre-qualification category.

Applying to the Construction Supplier Register is a two-part process

Part 1 – self - assessment

Part 2 – detailed assessment of applicant.

The Lead Department assesses the applicant's Part 1 application for compliance with the eligibility criteria before asking the applicant to complete Part 2. The Lead Department advises applicants of the outcome of their application to Part 1. There are a number of Landscape Architecture practices listed on the supplier register.

Regulation of Professions

The regulatory view

For the purposes of regulation in Australia, one way of understanding whether a vocation is a profession is to see if they operate under a Professional Standards Scheme, because if they do, they have proved their self-regulatory capacity and been recognised by the combined Australian governments' Professional Standards Councils.

A Professional Standards Scheme is a legal instrument that binds professional associations to monitor, enforce and improve the professional standards of their members, and to protect consumers of professional services. Any Australian professional association that meets the definitions and criteria outlined in professional standards legislation can apply for a Professional Standards Scheme. The Councils decide whether to approve such an application after considering a range of matters related to demonstrating commitment to professional standards and self-regulation.

In return for these commitments, Professional Standards Schemes cap the civil liability or damages that professionals who take part in an association's scheme may be required to pay if a court upholds a claim against them. A Professional Standards Scheme is only one indicator of professionalism and AILA has not yet reviewed our eligibility and may decide not to pursue for a variety of reasons.

Self-regulation versus independent regulation

Professions are either self-regulating or require a more significant degree of regulation due to their greater potential for harm. Regulation and accreditation are designed to protect the public by ensuring that only suitably trained and qualified practitioners are registered, can also help to facilitating workforce mobility across Australia and ensure continuous professional development.

Registration for some professions is a statutory requirement meaning that the profession is regulated. Registration is normally with the relevant profession's national Board.

which stipulates requirements for certification or registration. Self-regulating professions involve professional peers in establishing and monitoring professional standards. These range from setting minimum entry and ongoing education standards, through to monitoring standards of ethical codes of conduct.

'Professional of Record'

AILA's current self-regulated registration process meets the majority of the Australian Council of Professions' conditions, outlined in a review of the NSW Government's definition of a 'Professional of Record', which endorses the incorporation of the definition in the legislative framework, where an "Approved Register" is defined as one in which membership is voluntary and is limited to professionals who:

- Have defined minimum qualifications in both tertiary education and experience such that the holders can operate as professionals independently within their field of competence;
- Adheres to a Code of Ethics (the NSW Government's special requirements for risk management and continuing professional development are an inherent part of ethical practice required by the Code); and
- Are covered by professional indemnity insurance, either directly or indirectly, to the level required by the legislation.
- Access by the public to a register of current members and ability to lodge complaints;
- Disciplinary action for breaches of the Code of Ethics;
- The right of appeal by professionals judged ineligible for entry to the scheme or judged liable for disciplinary action;
- Access to a mediator or arbitrator, nominated by the President of the Professional Association, to assist in the resolution of disputes; and
- A scheme to be run by a "Registration Board" administered by the Professional Association and able to draw on the full range of Professional Association experience and expertise.

Self-regulating professions

Professional self-regulation is a regulatory framework

The AILA Registration Model

Landscape architecture is an established global profession. As AILA is a financial member of the International Federation of Landscape Architects (IFLA) it is important to understand the definition and recognition of the term Landscape Architect in a global context. Definition and international mutual recognition are central to discussions regarding legal protection of titles, recognition and regulation.

Definition of the Profession of Landscape Architects in collaboration with the International Labour Organization (ILO)

In 2018 the International Federation of Landscape Architects (IFLA) established a Task Force to develop a new definition of the profession of Landscape Architects. The existing definition of the profession as reported in the International Standard Classification of Occupations (ISCO) dates from 2008 and reflected an older and more narrow understanding of our profession. IFLA's goal was to develop a definition of the profession of Landscape Architecture that better reflects current understanding and responsibilities in the 21st century. The Task Force oversaw an interactive process to develop the new definition that lasted nearly two years.

The resulting definition, will form the basis for a new job profile in the next version of the ISCO (expected 2024-2030), as well as providing a new definition for use internationally and nationally. The definition as proposed by the Task force was approved by IFLA World Council in 2020. Since that time the definition has been translated in several languages. At this time the ILO work of the Task Force has been completed. New activities will start in 2024 when ILO will begin preparations for drafting content for the updated ISCO document that will include the definition for our profession. The profession of Landscape Architect may be adopted under different titles by non-English speaking countries.

Landscape Architects plan, design and manage natural and built environments, applying aesthetic and scientific principles to address ecological sustainability, quality and health of landscapes, collective memory, heritage and culture, and territorial justice. By leading and coordinating other disciplines, Landscape Architects deal with the interactions between natural and cultural ecosystems, such as adaptation and mitigation related to climate change and the stability of ecosystems, socio-economic improvements, and community health and welfare to create places that anticipate social and economic well-being.

The tasks of Landscape Architects include:

- (a) *Developing and managing the landscape by carrying out actions and preparing and implementing projects for heritage protection, preservation of natural and cultural landscapes, rehabilitation of degraded landscapes, and new development through a process of design, planning, management and maintenance.*
- (b) *Conducting research and analysis to develop sustainable landscape design, planning and management practices, theories, methods and development strategies to promote green infrastructure, the sustainable management of natural, agricultural, rural and urban landscapes and the sustainable use and management of global environmental resources.*
- (c) *Carrying out feasibility studies and impact assessments to gauge the effect of development on the ecology, environmental character, cultural values and community health and welfare of landscapes.*
- (d) *Collecting and documenting data through site analysis, including an appreciation of indigenous practices, landform, soils, vegetation, hydrology, visual characteristics and human-made and managed features.*
- (e) *Preparing landscape documentation, including drawings, specifications, schedules and contract documents, and calling tenders on behalf of clients.*
- (f) *Managing digital technologies and representation of spatial systems, and client and/or community presentations related to the environment and landscape.*
- (g) *Engaging local communities, authorities and stakeholders by public participation in decision-making relating to projects that impact landscape.*
- (h) *Providing expert advice and advocacy on landscape matters in conflict resolution, judicial courts and commissions, competitions, media and public relations.*

Global Professional Recognition

The International Federation of Landscape Architects (IFLA), building on the work undertaken in the IFLA Strategy for International Recognition of Professional Qualifications (Second draft: A. Tutundzic, M. Cervera, 13.03.2019), is developing a work plan to guide activities during 2021-23, to:

- Providing support for improved recognition between national associations through bilateral agreements
- Assisting with individual migration of professionally qualified Landscape Architects by recognising existing accreditation bodies (i.e., national associations and Council of Landscape Architectural Registration Boards (CLARB) who are already providing individual professional recognition
- Rewarding individual professional excellence.

Global Education Recognition and Accreditation (ERA)

The IFLA Education and Academic Affairs Committee has identified that as "access to quality education is an opportunity for social mobility and reducing inequalities" that it is essential to finalise the IFLA Global Education Recognition procedures, to monitor the quality of Landscape Architectural education globally to ensure better learning outcomes.

Two pilot programs have been selected to apply the ERA guidelines, in China and South America (Chile) they will be assessed against the Evidence Required Checklist and Self-Assessment Report Summary. The results will be studied, and this will help finalise the Global Education Recognition procedures which are a high priority for IFLA Executive Committee and IFLA World Council.

Registered Landscape Architects - the AILA Model (Self-Regulated)

In Australia there is no legal requirement for Landscape Architects or landscape professionals to hold membership with the Australian Institute of Landscape Architects. There is, however, an increasing preference for the involvement of a Registered Landscape Architect amongst some local government authorities, which is a trade marked title and does necessitate being an AILA member.

AILA is responsible for regulating the professional conduct of Registered Landscape Architects and AILA members are bound by a Code of Professional Conduct.

The AILA Registration process and requirements include:

- Completion of an accredited tertiary qualification in Landscape Architecture (four (4) year undergraduate (bachelors) degree (AQF8) and two or three (2-3) year postgraduate (masters) degree AQF9)* and
- A minimum of two (2) years' full time post graduate experience
- An AILA application review, including approval of a proposed Mentor.**
- Successful completion of a 12-month mentorship program including the keeping of a log book.
- Oral interview assessment
- Ongoing Continued Professional Development - 30 points per year to maintain registration status.

*AILA as the professional body of Landscape Architects in Australia accredits all university Landscape Architecture programs in Australia and administers a national registration process that assesses the qualifications and experience of Landscape Architects.

**If the applicant has been working as a Landscape Architect for eight or more years and has an AILA accredited Landscape Architecture qualification, then the applicant may be eligible for Senior Entry and may not need to undertake the mentorship program.

Registration Model Examples

Engineers - the Engineers Australia model (Self-Regulated)

In Australia, states and territories are responsible for statutory registration of engineers. Statutory registration ensures engineers meet professional conduct, education, training, and competency standards.

In general, to become a registered engineer you need to demonstrate a benchmarked minimum qualification for a professional engineer and have had a competency assessment for independent practice.

The minimum qualification of a professional engineer is a Washington Accord recognised degree or equivalent.

The registration requirements are different for each state and territory. Professional engineers must register in each jurisdiction where they plan to practice.

NER Direct and Chartered are recognised competency assessments for independent practice.

Chartered

Status of Chartered engineer:

- Recognised throughout the world for their skills and professionalism. Chartered provides global recognition and enables working abroad.
- Demonstrated skills, providing a competitive edge and showing commitment to the highest professional standards.
- Peer-assessed against industry-recognised standards. Engineers are benchmarked against the best across 16 key competencies, spanning technical, management and communication skills.

National Engineering Register (NER)

- Engineers Australia (EA) introduced a registration framework called the National Engineering Register (NER). When engineers are listed on the NER it becomes a badge of professionalism, demonstrating professional recognition and public trust.
- Engineers Australia's National Engineering Register (NER) is the largest Engineering Register in the country delivering a uniform national benchmark standard of professionalism in the broadest areas of engineering practice, both general and specialised.
- The NER is a publicly searchable database providing a national system of 'registration' for the engineering profession in Australia of professional engineers, engineering technologists and engineering associates in both the private and public sectors.

Engineers Australia membership and registration on the National Registers may require assessment of competence at two stages:

Stage 1 Competency Assessment

Stage 2 Competency Assessment

Accreditation

Engineers Australia is the trusted accreditation authority for tertiary engineering education in Australia and overseas. The Australian Engineering Accreditation Centre (AEAC) evaluates engineering programs at the levels of Professional Engineer, Engineering Technologist and Engineering Associate.

Mutual Recognition

Engineers Australia has established mutual recognition agreements with Institutions around the world through which a member of such a body, on application, will be accorded an equivalent level of membership in Engineers Australia and vice versa. In some cases, the agreements cover more than one grade of membership and occupational category.

Participation in international engineering organisations Engineers Australia (EA) is an active member of the World Federation of Engineering Organisations (WFEO) and the Federation of Engineering Institutions of Asia and Pacific (FEIAP).

Their participation in international engineering organisations is led by Engineers Australia's International Committee, a volunteer-based, Council-appointed committee. The International Committee provides leadership and direction for the organisation's international activities to ensure there is ongoing member benefit and alignment with the strategic objectives of Engineers Australia.

Architects – the Architects Accreditation Council of Australia model (Independantly-Regulated)

The National Standard of Competency for Architects (NSCA) describes what is reasonably expected of a person who can demonstrate the standard of skill, care and diligence widely accepted in Australia as a competent and professional Architect.

Having one standard that underpins accreditation of architecture education and assessment programs provides a clear roadmap for the development of competency on the path to registration as an architect.

The NSCA sets out functions important to the profession of architecture, rather than simply measuring knowledge in isolation from skills, or time spent in formal education. The Standard is not a form of assessment in itself but a framework to be used by those authorised to assess the professional standards of Architects.

2021 National Standard of Competency for Architects (ACTIVE from 2022)

The 2021 NSCA was released on the 1st July 2021, and is the result of the regular five-yearly review. It underpins all assessment processes including the accreditation of architecture programs leading to registration as an architect in Australia.

The 2021 NSCA sets out a clear roadmap for the development and assessment of competency at key milestones over the course of a career in architecture – from graduation, through the registration process, to ongoing practice after registration. This is inclusive of a range of practice models and career paths.

The 2021 NSCA has been developed through an 18-month process involving in-depth research and close engagement with stakeholders. The new NSCA will continue to provide the framework for the Architect Registration Board in every state and territory.

Program accreditation

The Architecture Program Accreditation Procedure in Australia and New Zealand sets out the peer review process through which all architecture programs in Australia are assessed against the accreditation standard over five years or ten semester equivalence of learning cycle.

The eight state and territory architect registration Boards have statutory responsibility for the accreditation of architectural programs of study within their jurisdictions. Programs accredited in one jurisdiction are recognised in any other jurisdiction in Australia and New Zealand.

For the purposes of accreditation, architecture programs are required to demonstrate that graduates meet 37 of the 70 Performance Criteria in the National Standard of Competency for Architects.

Assessment for accreditation occurs through the conduct of an Accreditation Review Panel composed of practicing architects and academics selected from the Accreditation Standing Panel. The Accreditation Review Panel makes a recommendation on whether and for how long a program should be accredited.

National Standard of Competency for Architects

AACA develops and reviews the National Standard of Competency for Architects on behalf of Architects. All pathways require applicants to apply knowledge and skills in architectural practice as specified in the National Standard of Competency for Architects.

Overseas or Local Experienced Practitioner

- Australian Accredited Qualifications
- Overseas Qualifications
- National Program of Assessment

Architectural Practice Exam

- AACA Logbook
- AACA On-line Exam
- AACA Interview

Registration

- By Architect Registration Board,
- Subject to "fitness to practice" evaluation and payment of fee

Options for Improved Recognition and Registration

Regulation of Professions Summary

Criteria	Registered Landscape Architects (AUS)	Chartered Landscape Architects (UK)	Engineers (AUS)	Architects (AUS)
Protected Title*	✓ *	✓ *	✗	✓
Recognised Title	✓ **	✓ **	✓ **	✓
Competency Framework	✓	✓	✓	✓
National Register/Mutual Recognition	✓	✓	✓	✓
Registration Requirements for Individuals	✓	✓	✓	✓
Types of Divisions of Registration	✓	✓	✓	✓
Renewal of Registration	✓	✓	✓	✓
Code of Conduct	✓	✓	✓	✓
Professional Indemnity Insurance	✓ ***	✓	✓	✓
Maintenance of Skills + Knowledge	✓	✓	✓	✓
International Mutual Recognition	✓ ****	✓ ****	✓	✓
University Accreditation	✓	✓	✓	✓
Self-Regulated	✓	✓	✓	✗
Independently Regulated	✗	✗	✗	✓

*In Australia the title Architects is a protected title, the title engineer is not a protected title, the title Landscape Architect is not a legally protected title, however, the title 'Registered Landscape Architect' is protected. In the UK the title Landscape Architect is not a protected title - however the titles 'Chartered Landscape Architect' and 'Chartered Member of the Landscape Institute (CMLI)' are protected.

** Titles are inconsistently recognised and not mandated across each country.

*** Discretionary not mandated by Association. Insurance cover typically held and evidenced to the client, with a range of minimum cover.

**** Linked to International Federation of Landscape Architects (IFLA) and under review

Registration Options

The following section of this paper presents options for further consideration and discussion in consideration of the preceding appraisal of comparable regulated professions.

Option 1: Improved Self-Regulation of Registration

Option 1 is for AILA to improve the self-regulation of the registration process and the recognition of Registered Landscape Architects and Landscape Architects

AILA does not believe that we have the option of doing nothing, but instead should develop a more comprehensive self-regulated registration scheme based on a revised competency and CPD framework, that builds government and confidence and the public's trust like Chartered Accountants, Chartered Engineers or Chartered Members of the Landscape Institute (UK).

In the UK the term 'Landscape Architect' is similarly a job title and is not legally protected. What is protected however are the titles 'Chartered Landscape Architect' and 'Chartered Member of the Landscape Institute (CMLI)'. Similarly there is no legal requirement for Landscape Architects or landscape professionals to hold membership with the Landscape Institute in the UK.

It is thought to be the case that most governments and most local councils require in the UK landscape documentation to be prepared by a 'Chartered Landscape Architect' and 'Chartered Member of the Landscape Institute (CMLI)'.

The LI professional development programme helps LI members to achieve the highest standards in landscape practice. Chartered membership of the Landscape Institute (CMLI) is only awarded to those who reach the highest standards in landscape education and practice. CMLI is a mark of excellence that tells prospective clients and employers that a landscape practitioner is the best in their field.

Being chartered is a commitment to continuing professional development, keeping at the top of the Landscape Architecture profession in the UK. It is a public and professional declaration that a member follows a Code of Professional Conduct.

As a profession, Landscape Architecture in Europe is mostly unregulated. At present, LI relies on a mechanism called the Mutual Recognition of Professional Qualifications (MRPQ) Directive. This is the agreement

between most European countries to recognise one another's professional qualifications. LI does consider members of similar overseas bodies for Chartered membership via their member panel route. They also still recognise certain European qualifications that are 'recognised' by IFLA Europe when ascertaining whether someone meets their requirements for Associate membership. Associate member is required to enable the member to join the LI Pathway to Chartership.

Alongside scheduled university accreditation policy review and further advocacy and profile raising, a more comprehensive self-regulated registration process may achieve greater recognition of Landscape Architects and in particular registered Landscape Architects.

Pros

Builds on existing AILA self-regulated registration program

Terms of Reference have been prepared for a CPD working group to develop AILA comprehensive competency and CPD framework

The development of a more comprehensive AILA competency and CPD framework would be required as the base for future independent regulation should that be sought in the future

AILA would still accredit the university Landscape Architecture programs

Improves the quality of AILA Registered Landscape Architects and may help to facilitate earlier engagement in the development of legislation that directly affects Landscape Architects.

Does not divide AILA membership and registration minimising the risk to the viability of AILA in terms of membership numbers and revenue

Helps to raise government recognition

Helps to raise the profile of Landscape Architecture more broadly and public confidence

Cons

Will not meet the independent regulation requirements currently sought by the QBCC (but noting subject to further review and ongoing AILA advocacy)

May not meet the regulation requirements sought by other jurisdictions for building practitioners

May require the creation of a registration pathway between old competency framework and new, subject to the development of the competency framework

Option 2: Independent Regulation + Legal Protection of Title

Option 2 is for AILA to pursue legal protection of the title Landscape Architect and independent regulation

The alternative option is to instead develop a more comprehensive independently-regulated registration scheme that builds government and public confidence like Architects, either included in the expanded scope of the Architects Accreditation Council of Australia (AACAA) with State and Territory Architect Registration Boards, or through the formation of a comparable Landscape Architects Accreditation Council of Australia and State and Territory Registration Boards.

Pros

Legal Protection of the title Landscape Architect - would necessitate an expansion of the coverage of the Architects Act or a new Act

Independent regulation may increase recognition by government in terms of building practitioner regulations and construction licencing

May help to facilitate earlier engagement in the development of legislation that directly and affects Landscape Architects.

The opportunity to lift the standing and recognition of Landscape Architecture by other built environment professions

Mutual Recognition in all states/territories in Australia

Potential for the Architects Accreditation Council of Australia to provide independently regulation - would necessitate expansion of their coverage and reflection in the identity of the Council.

Strengthen the voice of the built environment profession

AILA would still deliver CPD

Cons

AILA would no longer regulate the registration of Landscape Architects - but would be a stakeholder of the Architects Accreditation Council or equivalent Council

If no support for combining with the Architects Accreditation Council of Australia, this would necessitate a more involved process of establishing a new national accreditation council and state and territory based registration boards

AILA would no longer accredit the university Landscape Architecture programs - but would be an accreditation stakeholder

Anticipated increased cost to members of registration

Increased cost to members if AILA membership to be retained/taken up in addition to registration

Risk of a significant reduction in AILA members

Risk of a significant reduction in AILA revenue

Significant investment in time and cost to resource the development of a competency framework suitable for independent regulation and legal title protection - potentially a 5-year plan

Recruitment of candidates with the calibre and stamina for the 'AILA Registration Task Force' for an anticipated 5-year term.

Would create two tiers of Registered Landscape Architects - would need to create a new registration pathway

Next Steps

The Australian Institute of Landscape Architects Ltd. (AILA) is a company limited by guarantee formed for the benefit of the public, as such the AILA Board must act in the interests of AILA as a company, in the interests of the public, and as membership based organisation, on behalf of our members. It is apparent that the process of registration, legal protection of the title Landscape Architect and self-regulation versus independent regulation remains a current issue for some, but not all AILA members, and regardless may remain of interest to all levels of government and to the public.

The next steps are outlined below:

1. Canvas the views of our membership on the topic of registration, regulation and legal title protection to inform AILA's future strategic priorities, objectives and targets.
2. The AILA CPD Working Group to prepare the new AILA Competency and Continuing Professional Development Framework.
3. Review whether we can qualify for a Professional Standards Scheme and whether appropriate to pursue.
4. Review the establishment of an "Approved Register" in accordance with the expectation of the Australian Council of Professions, based on the publicly accessible and searchable list of Registered Landscape Architects.
5. Continue to provide advocacy support for the Queensland Chapter in relation to the recognition of Landscape Architects and the Queensland Building and Construction Commission in relation to construction licencing.
6. Continue to advocate across Australia in relation to the recognition of Landscape Architects/Registered Landscape Architects in terms of any proposed legislation changes.
7. Educate Landscape Architects on the implications of relevant legislative changes.
8. Advocate for AILA representation on all state government representative bodies overseeing design and construction regulations and licencing to anticipate further legislative changes.
9. In line with AILA policy, and development of IFLA's Global Education Recognition and Accreditation (ERA) program, review AILA's university accreditation program as part of the development of AILA's competency framework.
10. More broadly pursue and achieve AILA's strategic objectives for the next two to five years - to ensure the role of Landscape Architecture is understood and respected by all levels of Australian government, that AILA's CPD program meets the needs of a growing and increasingly complex profession and state based legislation, and that AILA's registration is sought after by Landscape Architects and valued by stakeholders.

References

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- International Federation of Landscape Architects (IFLA) ILO Draft Definition of Landscape Architecture
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- International Federation of Landscape Architects (IFLA) 2021 World Council Education and Academic Affairs Committee Report
- Landscape Institute (LI) and website
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