# Media Release

Monday, 12 August 2019

## High Court decision on the application of the *Mutual Recognition Act 1992* (Cth)

The Victorian Building Authority is disappointed with the outcome of its appeal to the High Court of Australia and its possible ramifications for Victorian consumers. The High Court dismissed the VBA's challenge to a Federal Court decision that precluded the VBA from considering the character of applicants for registration under the Commonwealth *Mutual Recognition Act 1992* (MRA).

Mr Nickolaos Andriotis, a Victorian resident, had falsely stated in his application to the New South Wales registration authority that he had certain work experience as a water proofer, based on which he gained registration in NSW. He then sought registration as a water proofer in Victoria, through the MRA based on his NSW registration.

In November 2015, Mr Andriotis' application was refused by the Building Practitioners Board (BPB) on the basis that he was not of good character. The BPB's finding concerning Mr Andriotis' character was affirmed by the Administrative Appeals Tribunal (AAT). However, the Federal Court overturned the AAT decision in February 2018, finding that a local registration authority has no power to consider an applicant's character when determining a mutual recognition application.

On 7 August 2019, the High Court confirmed the Federal Court's decision and found that the VBA could not refuse Mr Andriotis' application on character grounds.

The VBA believes the decision may have profound implications for the building industry across Australia, as the mutual recognition legislation could be used to allow less experienced practitioners and persons of poor character to be admitted to the industry. The legislation allows such practitioners to become registered in jurisdictions with less stringent or thorough registration requirements, who then use the mutual recognition regime to gain "back door" registration in States such as Victoria, with more stringent requirements.

The chief executive officer of the VBA, Sue Eddy, said while the High Court's decision settled the legal uncertainty relating to the MRA, the decision represents a setback for consumer protection in Victoria.

"Victorian consumers should be entitled to presume that the building practitioners they invite into their homes have the requisite experience and are of good character," Ms Eddy said.

"In this instance, the applicant lied to the NSW regulator about his previous experience. Due to the manner in which his application for registration in NSW was processed at the relevant time, this was not picked up. In circumstances where the VBA is aware that an applicant has provided false information to gain registration in NSW, it seems incredible that the mutual recognition regime requires the VBA to register him in Victoria, yet this is the effect of the High Court's decision."

The High Court's decision confirms the MRA mandates recognition by Victorian regulators of occupational registrations obtained in other Australian States and Territories where the categories of registration are equivalent in both jurisdictions, even if the applicant gained registration in the initial State by providing false information. The matter will now be remitted back to the AAT, for a re-hearing of the appeal against the BPB's decision.

The VBA will ask the NSW regulator to reconsider the applicant's registration in light of the AAT's findings as to his character and the circumstances in which he obtained his original registration from the NSW regulator.

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