IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M134 of 2018

BETWEEN:

VICTORIAN BUILDING AUTHORITY
Appellant

and

NICKOLAOS ANDRIOTIS
Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

PART I: CERTIFICATION

This outline is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED

1.	The legislative regimes - the *Building Act 1993* (Vic) - the *Mutual Recognition Act 1992* (Cth)	AS [10]-[24]
2.	The AAT's decision: the applicant was not of good character and the VBA's decision to refuse his registration was affirmed	AS [7]-[8]
3.	The decision of the Full Court	AS [9]
	Ground 2: A "good character" requirement falls within the exception to the mutual recognition principle	
4.	Section 17(2) of the *Mutual Recognition Act* qualifies the mutual recognition principle in s 17(1). If a State law falls within the exception in s 17(2) then it applies to a person seeking registration notwithstanding the mutual recognition principle and notwithstanding s 20(1).	AS [55]-[61]
5.	Section 170(1)(c) of the *Building Act* is a law falling within the exception to the mutual recognition principle in s 17(2) (a) Section 170(1)(c) is a law regulating "the manner of carrying on an occupation" (as Mr Andriotis appears to concede: RS [51]) (b) Section 170(1)(c) applies "equally to all persons … seeking to carry on the occupation" (not in dispute) (c) Section 170(1)(c) is not "based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation" - "good character" is not a "qualification" as that term is used in s 17(2), having regard to text, context and purpose	AS [62]-[69], AR [16]

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	- the text of s 17(2) distinguishes between qualifications and experience, giving "qualification" a narrower meaning that it might otherwise have o *R v Refshauge* (1976) 11 ALR 471 at 475. - "qualification" is not defined in the Act. It is used in the definition of "occupation" in a broad fashion, but that does not control its meaning in s 17(2) - the consequences for operation of s 20(4) — which uses the same phrase as s 17(2) — mean that a law imposing a good character requirement should not be understood as a law "based on attainment or possession of some qualification or experience" (d) It is not possible to distinguish between a character requirement imposed at initial registration for an occupation and one imposed in respect of the continuing post-registration requirements.	Cf RS [62]
6.	The proposition that the *Mutual Recognition Act* requires a local registration authority to register a person who is found to be of bad character, but that the authority can, upon registering the person, immediately take action to cancel their registration under the relevant local statute, is an artificial and inefficient approach to the construction of the *Mutual Recognition Act*.	Cf RS [74]-[75]
	Ground 1: a discretion under the *Mutual Recognition Act*	
7.	Both parties agree that a local registration authority may refuse to register an applicant who has lodged a s 19 notice that contains statements and information that are literally true. The difference between the parties is the source of that power. (a) Mr Andriotis contends the only source of the power is s 23(1), based on his approach to when statements in a s 19 notice are "misleading". (b) The VBA contends the source of the power includes both s 23(1) and a residual discretion in s 20(2) of the *Mutual Recognition Act*.	
8.	The VBA's construction: Based on its text, context and purpose, s 20(2) of the *Mutual Recognition Act* provides for a discretion to refuse registration to an interstate applicant. (a) use of the term "may" in s 20(2), and also in ss 21(3) and 22(2): *Acts Interpretation Act 1901* (Cth), s 33(2A) (b) context: use of "may" and "must" in other provisions (c) context: scheme does not provide for an immediate right to registration upon lodging of a s 19 notice (d) harmful consequences of denying discretion (e) authorities o *Re Petroulias* [2005] 1 Qd R 643 at 652 [29]-[30], 656 [53] o *Re Tkacz* (2006) 206 FLR 171 at 187-188 [68]	AS [25]-[42], AR [10]-[13]

9.	The discretion so conferred is not at large — it is confined by the text and context of the *Mutual Recognition Act*	AS [43]-[47]
10.	The VBA's approach is to be preferred to Mr Andriotis' approach: (a) It is unclear how Mr Andriotis' approach would operate in practice (b) Mr Andriotis' approach is not reflected in the legislative choice as to the matters to be declared in a s 19 notice (c) It will not always be clear to an applicant that their conduct would be such as to preclude them from lodging a valid s 19 notice, nor that they could, perhaps, disclose that conduct	
11.	**Alternatively**, if Mr Andriotis' construction is accepted, the AAT had power to refuse his registration. Mr Andriotis says that: (a) if a person lodges a literally true s 19 notice, relevantly stating that they are not the subject of any disciplinary action, (b) but in fact they have engaged in conduct that has the potential to attract disciplinary sanction, (c) then their s 19 notice is misleading and the power to refuse registration under s 23(1) is engaged. Here: (a) although Mr Andriotis' s 19 notice was literally true, the AAT found that Mr Andriotis: - was not of good character, - that he had provided incorrect information to the NSW authority, - that he was party to a scheme intended to deceive the regulators; (b) thus Mr Andriotis has conducted himself in a manner that had the potential to attract disciplinary action in New South Wales; o *Home Building Act 1989* (NSW), ss 43(1), 56(b)-(c), (j) (c) thus the AAT had power to refuse registration under s 23(1) on the basis that his s 19 notice was materially misleading. If a source of power to do an act exists, the fact that the repository was mistaken as to the source does not affect the validity of the act. o *Eastman v Director of Public Prosecutions* (ACT) (2003) 214 CLR 318 at 362 [124] and the cases cited in fn 93 Thus the Full Court's conclusion that the AAT had no power to refuse registration was in error and the appeal should be allowed.	AR [9]

Dated: 12 February 2019

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