

national
competition
policy
and the
professions

Australian Council of Professions
Institution of Engineers, Australia
Australian Veterinary Association
Royal Australian Institute of Architects
Australian Physiotherapy Association



Australian Council of Professions



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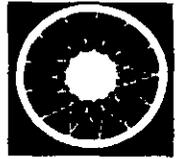
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In pursuing the interests of its constituency, the Council is concerned to play a positive role in the affairs of the nation. It is a reality not often understood or acknowledged that many of the issues of immediate concern to the professions have a larger dimension extending to the health and welfare of the community at large and the Council readily accepts a responsibility to tell this story in as objective a fashion as possible. We hold strongly to the view that there is a significant public benefit in the maintenance of the highest levels of professional practice in this country and that the concept and pursuit of 'professionalism' is essential to meeting the needs and aspirations of each and every citizen, thus contributing to the preservation of the social fabric.

These are lofty ideals often, I regret to say, trivialised by critics of one or other of the professions. That sets the parameters of our challenge. Programs of government, instituted in pursuit of broad ideological objectives and with an undoubted electoral mandate, can sometimes impinge on the efforts of the professions to preserve for the community all that is best in professional practice. In consequence, the Australian Council of Professions seeks actively to promote dialogue with legislators, administrators and within the community at large to ensure that a balanced view of policy outcomes is developed and that results inimical to the maintenance of professionalism in this country, usually unintended, are avoided to the greatest extent possible.

An area of prime focus is national competition policy and its translation to professional practice. The Council's general attitude is one of endorsement of the principle of competition on the basis of merit for the provision of any specific service, to be read against the imperative that the public interest and the protection of consumers should be the paramount criteria in assessing the need for any change flowing from the application of competition policy rules. In the evolutionary processes currently underway, the Council welcomes its consultation relationships with the Australian Competition and Consumer Commission and is eager to learn more about the role of the National Competition Council, particularly in over-sighting the legislative review program currently being undertaken by nine separate jurisdictions with little semblance of consultation or consistency of approach. Our basic tenet is that professional standards involve many criteria, for instance professional ethics and service to the community, which are of far greater importance than the price at which a professional service is provided and we will continue, in the public interest, to keep this thought alive in the minds of the regulators of competition policy as they go about their important task.

This publication comprises five recent papers by the Council or some of its constituent bodies, from which are distilled in Dr John Webster's overview paper matters of immediate concern, particularly with reference to the current legislative review program. The Council and The Institution of Engineers, Australia, with the support of the Council's other constituent professional associations, have issued this publication as a contribution to a more informed public debate.

*Foreword by Joycelyn Morton, President,
Australian Council of Professions*

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COMPETITION POLICY AND THE PROFESSIONS
— THE ISSUES

Overview by
John Webster
Chief Executive
Institution of Engineers, Australia



The
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of Engineers,
Australia

competition policy and the professions – the issues

Competition is the yardstick by which most business practices are now being measured and the profile of national competition policy continues to be raised to even greater heights through the Legislative Review Process.

Over 2000 pieces of legislation are currently being reviewed by the Commonwealth, States and Territories. The legislative review process requires those responsible for the reviews, and there are different reviewers for each piece of legislation, to make a judgement on the public interest aspects including social, environmental, or safety standards, against the gains from the introduction of a more competitive environment.

For the professions generally this has meant a questioning of the barriers to entry, barriers to practice, licensing restrictions and ownership of practice. This process demands a shared understanding and definition of what constitutes the public interest. The debate necessary to establish such a shared understanding has yet to occur in Australia.

Factoring qualitative criteria into cost benefit analysis of professional services in a manner which generates objective estimates of both input and output costs is vital. Many examples provided by competition policy units within State Departments to the officers undertaking the reviews, have included simplistic cost benefit calculations based on an assumption that an increase in the numbers of persons delivering professional services in the market, and a reduction in the level of qualifications and experience required of such practitioners, would decrease the level of consultation fees. In one analysis, the saving was calculated at \$5.00 per consultation. However, no effort was made to estimate the cost impact, whether on individual clients or the community, flowing from any increase in the proportion of incomplete or incompetent work.

So how do we set about evaluating public interest issues against competition? In order to do this it is

important to understand what constitutes a profession and how professions differ from other businesses. A profession is characterised by the following attributes:

- a requirement for special knowledge and skills in a widely recognised body of learning, derived from research, education and training at a high level;
- a requirement that practitioners exercise their knowledge and skills in the interest of others;
- standards of competence and conduct that are established and enforced by an association or similar body which represents the profession as a whole and which operates under a charter or articles of association which define its gatekeeper role; and
- adherence by practitioners to a code of conduct which includes requirements that they place the health, safety and welfare of the wider community ahead of any loyalties to clients, colleagues or the profession, and that they practice only within their area of competence.

These attributes offer some protection to the public, as professional services usually involve areas in which the practitioners have information which, by definition, is not readily available to the general consumer. The information accessible to lay persons may be incomplete, likely to prove misleading, or insufficient to enable a reasonable choice to be made, or may simply be costly or difficult to acquire. Asymmetry of knowledge thus becomes an important factor in the dealings between practitioners and their clients, making it difficult for consumers to choose between alternative service providers.

The definition of "public interest" in the context of the delivery of professional services is complex, particularly given there are no international comparisons to draw upon. Australia is the only country in the world so far to have undertaken such an intricate process of regulatory reform.

In this context the role of both the Council of Australian Governments (CoAG) and the National Competition Council in providing clear and lucid interpretations has, to date, been limited. Dr John Southwick in his paper *Can the Professions Survive under Competition Policy?* commented that:

.....the Australian Council of Professions' concern is that competition policy outcomes measured solely or predominantly in terms of price would undermine professional standards and the quality of professional services provided to the community.

The legislative review process which is currently being undertaken as part of the competition policy implementation process has the potential to impact negatively on national provisions for mutual recognition and, by implication, on international agreements. This risk arises because States and Territories are reviewing professional registration Acts individually.

At the outset of the review process there was an expectation that where mutual recognition issues were concerned, States and Territories would undertake national reviews. However, to date, only one national review, that of travel agents, has been agreed upon.

Either national reviews should be undertaken of those Acts which have mutual recognition implications, or, if individual legislative reviews do result in changes to registration Acts, there be a specific requirement imposed by the National Competition Council that the outcomes not be such as to disrupt existing mutual recognition agreements.

On the issue of mutual recognition of professional qualifications and registration procedures, Dr John Webster in his paper notes that,:

... it is vital that domestic and international policy decisions do not undermine the achievement of policy outcomes for either. However, there is a real danger that the recently achieved mutual recognition agreements are in jeopardy, as a result of the competition policy legislative review

processes. Mutual recognition agreements of the professions within Australia have only lately been achieved by the professions themselves.

International mutual recognition agreements will also be under threat if mutual recognition agreements within Australia are dismantled. The Royal Australian Institute of Architects cites an estimate by its professional indemnity insurers that some 22% of the fees earned by Australian architects are derived from overseas (export) activity.

....in large measure, that business has been built upon confidence by overseas clients in the quality of the work undertaken by Australian architects, secured by the existing systems of registration in all States and Territories. Central to the export of architectural services is the fact that, in almost every country to which we export professional services, registration as a professional in one's home country is the common denominator, representing the accepted minimum standard for practice.

The Australian Veterinary Association also comments on the potential impact of legislative reviews on the international aspects of practice by their members, and notes that:

... the responsibility of veterinary practitioners extends beyond merely the care of domestic pets. Incorrect diagnosis or failure to identify a notifiable or exotic disease may have significant implications, not only for the particular animal being treated, but also for the public at large. Communication of such diseases may have negative consequences for the entire agricultural industry with potential impact on all forms of trade and commerce both nationally and internationally.

A fundamental requirement for any competitive market is that of informed consumers. Consumers will be expected to take informed decisions within partially deregulated professional markets. Unless there are informed consumers, deregulated markets do not work properly. Furthermore, the legislative reviews require those who have ben-

edited from allegedly anti-competitive elements of certain Acts to argue for the retention of those elements. Consumers must be informed as to the merits of the arguments in order to participate in such debates in any meaningful manner.

The most comprehensive work carried out in recent times on competition policy has been that undertaken by the House of Representatives Standing Committee on Financial Institutions and Public Administration. Its report entitled *Cultivating Competition* concluded that the public interest test was a pivotal element of competition policy, and recommended that there be a consistency of approach throughout jurisdictions.

The Standing Committee further recommended that all agencies involved in implementing national competition policy should devote resources to ensure community understanding and debate about the contents of the policy and its outcomes. The chairman's tabling speech, and the list of recommendations, have been included as an appendix to the papers.

I therefore commend these papers to your attention. Increased competition in most areas of our national life has the potential to bring significant economic benefits to us all. However, if the changes required to achieve increased competition simply result in a general lowering of the standards applicable to the services and/or products that we consume, the savings will be short-lived, and, in the longer-term, the extra costs to the community could be severe.

In the delivery of most professional services, time spent at the design stage in ensuring that the final product will indeed satisfy the needs and expectations of the stakeholders is never wasted, and can often make the critical difference between success and failure of the project. That rule is equally applicable to the conduct of the current and proposed legislative reviews.

Dr John Webster
Chair
Competition Policy Committee ACP

COMPETITION LAW AND THE PROFESSIONS CONFERENCE

Can the Professions survive under a National Competition Policy?

The Australian Council of Professions' View

Perth, Western Australia

11 April 1997

**Dr John Southwick
President
Australian Council of Professions**



Australian Council of Professions

can the professions survive under a national competition policy?

This is a timely and significant conference and one with which the Australian Council of Professions is very pleased to be associated.

The title of the conference is challenging: the short answer to the question posed must be 'yes'. The Australian Council of Professions has, over the years, been closely involved in the public processes, culminating in the Hilmer Report, which have addressed the position of the professions in the context of national competition policy. Generally, the Council has always accepted the Hilmer proposition that the Trade Practices Act should have universal coverage, including the professions – this position was acknowledged in the Hilmer Report itself.

ACP policy

In its submission to the Hilmer Inquiry, however, the ACP said that it endorses the principle of competition on the basis of merit for the provision of any specific service. In fact, the Council supports the removal of unnecessary barriers to competition, but the key word is 'unnecessary'. We must not abandon those barriers which, whilst perhaps appearing to be anti-competitive, can be shown to be in the public interest. The ACP submission also said that "The public interest and the protection of consumers should be the paramount criteria in assessing the need for any change."

uncertainty in the professions

This remains the ACP's basic policy stance but there is a pronounced degree of uncertainty existing within the professions about the evolving processes of implementation of the Hilmer recommendations in respect to professional practice.

This uncertainty is compounded by the fact that there are many players participating in the implementation processes:

- nine governments are the custodians of change and a multiplicity of semi-governmental authorities have a critical interest in outcomes;
- regulatory bureaucracies at Commonwealth, State and Territory levels come increasingly into focus and constitute one of the few growth areas in the public sector;
- peak business councils opine on the categorical imperatives driving competition reform while less prestigious business associations address the day-to-day realities;
- the Industry Commission in its latest manifestation as the Productivity Commission continues its work with extreme rationality of thought;
- while academia continues to find much to claim its attention in respect of both the theory and practice of bringing about a more competitive Australia.

ACCC

At the national level, the Australian Competition and Consumer Commission is of pre-eminent importance to the processes of implementation. Some professions have had a long association with the ACCC (and the antecedent Trade Practices Commission) in addressing the issue of compliance of their respective codes with the provisions of the Trade Practices Act. I must at this point commend Professor Fels, his fellow Commissioners and the ACCC staff for their efforts in establishing consultative mechanisms in which the professions can participate in pursuit of this vital dialogue. We welcome our membership of the ACCC's Consultative Committee and the more recently established Small Business Advisory Group, as we do the ACCC's co-sponsorship of this conference.

These avenues for consultation allow us to keep before the ACCC our views on the need, in the public interest, to measure the provision of professional services on grounds significantly broader than price. Our concern is that competition policy

outcomes measured solely or predominantly in terms of price would undermine professional standards and the quality of professional services provided to the community. In that context, I was interested to learn from the evidence given recently by Professor Fels to the House of Representatives Standing Committee on Financial Institutions and Public Administration that the Commission is having another look at its approach to pricing arrangements in professional practice. Considering the enormous volume of business which the ACCC will have to review it is important that it does not waste its time over professional association matters which are conceivably anti-competitive but quite internal and have no effect at all on the public interest.

penalties

As the sponsors of this conference have pointed out, non-compliance by professional practitioners with the provisions of the Trade Practices Act could give rise to heavy penalties.

An underlying issue is whether the present penalty provisions in the Act, which were formulated in an earlier and different context, are appropriate when applied to the professions. I am pleased to note that the ACCC is aware of this issue and I can indicate our support for their activities which will hopefully lead to a review by the Government based on the recommendations of a report prepared by the Australian Law Reform Commission a couple of years ago.

NCC

Also at the national level, the National Competition Council has its role to play but that role is not as clearly discernible as that of the ACCC, at least in respect of its impact on the professions. Apart from its designated functions, any work undertaken by the NCC must be agreed by a majority of Australian governments. In a comment on its work program last October, the NCC suggested that a matter that would benefit from examination would be "restrictions on the provision of various professional services". The NCC does not currently have

a work program identified by Australian governments but I understand from remarks made recently by a senior NCC official that, if the NCC were to receive a remit relating to the professions, it is likely that a public inquiry would be mounted. I would have thought that there has already been a surfeit of public inquiries into the issue of the professions and competition policy. Admittedly, this is no more than a straw in the wind at this stage but it is of potential concern given the processes already in place with the ACCC to which I have already referred.

There is also a question mark over the role of the NCC in the legislative review processes, with particular reference to the determination of public interest.

When looking at the roles of the two regulatory bodies following on the Competition Principles Agreement endorsed by governments some two years ago, a question remains:

"Do the processes of the NCC and ACCC overlap and, if so, what are the likely consequences for the professions?"

CPA

Under the Competition Principles Agreement, Australian governments are committed to reviewing by the turn of the century some 1,800 pieces of legislation (including subordinate legislation) to identify and assess 'anti-competitive' provisions — there is a lot riding on the outcome of this review process:

- State and Territory governments will receive significant financial rewards if, in the opinion of the NCC, they undertake their reviews in an appropriate way;
- what constitutes 'appropriateness', however, is arguable and inevitably raises the issue of public interest;
- there is inherent difficulty in factoring public interest into a proper cost/benefit analysis but

to rely simply on economic efficiency criteria (which seems to be the stance of the Industry Commission) would be to initiate, by default, a major de-regulation exercise on an extremely suspect basis;

- already there is evidence that at least one State has devised a methodology in which an objective base has been clearly established to ascertain economic outcomes, whilst only a minimal and subjective base has been established to ascertain the public benefit outcomes;
- with different authorities in nine jurisdictions each doing their own thing, the professions are particularly concerned that an ill-founded outcome in one jurisdiction could, in effect, prejudice a profession nationally – this would occur through the operation of the mutual recognition regime which requires that individuals able to practise in one jurisdiction are automatically able to practise in any other;
- on the evidence to date, we are concerned about the divergence in approach among the different jurisdictions, the form, substance and effect of 'national reviews' that can be set in train by any of the parties, and the lack of terms of reference and consultation in some cases.

uncertainty in government

I mentioned earlier that the professions are suffering from a great deal of uncertainty. It is obvious that all nine governments are also suffering from this uncertainty. It follows that the ACP, its constituent bodies and the 200,000 plus professional practitioners they represent will be looking to governments to pay due heed to the legislative review process with a view to enhancing the level of consultation and, in so doing, to assist in bringing about a necessary degree of consistency among jurisdictions.

professionalism

All of which brings me back to where I started: in answer to the question, - 'Can the professions sur-

vive under competition policy?', I gave the answer, "yes". There is, however, a more important question to which I don't know the answer. That question is 'Can "professionalism" survive under competition policy?'. I believe that the great majority of the members of the professions strive to practise in a professional manner. The Australian community looks for and is entitled to demand the highest professional service. I would claim that the level of professionalism we enjoy is a national asset which, while not lending itself to quantitative measurement, is a critical component in the processes necessary to preserve social cohesion. Professionalism is difficult to define and yet it is the essential difference between the professions on the one hand and business and commerce on the other.

history

With your indulgence I would like to recall the history of the of the development of the professions which provides an important perspective on their functions in society.

The early meaning of the word "profession" was a declaration or promise or vow made by a person entering a religious order. By the late middle ages, its meaning had changed to identify that class of persons who professed knowledge of some department of learning or science and used that professed knowledge in application to the affairs of others.

In particular, it came to refer to the three learned professions of those days - divinity, law and medicine and also to the military profession.

With the development of that "professionalism", associations of such persons formed together for the purposes of controlling the conduct and standard of behaviour of those persons professing to provide and providing those services. As society became more complex, the numbers of such professions and associations increased.

The elevated position of professionals in the community did not occur by accident. It was because of the function of individual professionals in band-

ing together and agreeing amongst themselves to adopt high standards of entry and to observe high standards of performance that the community came to respect and trust persons providing those services.

Self regulation and autonomy were an integral part of the development of those standards and it was in the interest of the members of the professions that those standards be maintained. From the point of view of the community it helped to ensure the quality of the services being provided.

The public interest in maintaining the highest standards in the provision of professional services and in the behaviour of those professionals was given effect to by statutes empowering professional associations, or in some cases licensing boards consisting mainly of the professionals, to set criteria for entry, to control conduct of members and, where appropriate, to exclude from professional practice those whose standards fall below acceptable levels.

It is an unfortunate development that the word "profession" has over the last two or three centuries come to have several meanings apart from the ones I have just mentioned. It can now be used to describe any calling or occupation by which a person habitually earns his or her living and, as we all know, that covers a multitude of things which have nothing to do with learning.

It is, I believe, a more fortunate change that has brought about the inclusion of a number of other occupations into the ranks of the professions as we define them through their adopting the high standards and ideals of professionalism.

definition

Within the ACP, a profession is defined as:

- a disciplined group of individuals who adhere to high ethical standards and uphold themselves to, and are accepted by, the public as possessing special knowledge and skills in a widely recognised, organised body of learning de-

rived from education and training at a high level, and who are prepared to exercise this knowledge and these skills in the interest of others; and

- inherent in this definition is the concept that the responsibility for the welfare, health and safety of the community shall take precedence over other considerations.

effect of CPA

The application of pure competition principles to the professions may very well take away the professional commitment to the welfare of the client and the community, and replace it with a commitment to business principles and profit.

A great difficulty with the provision of services is that the members of the community are generally not in a position to assess the quality of the service, or for that matter, the qualifications of the providers. Professional services are often extremely complex and the assessments are often made according to the provider's manner, presentation, advertising claims and prices without an awareness of their knowledge, skill and judgement.

Provision of a licensing or regulation process provides some degree of protection for members of the public. Deregulation removes it and must be introduced only after very careful assessment and consultation with all stakeholders.

These problems also exist at government level. I am aware that in the engineering profession there is a great concern that governments' outsourcing policies have led to a situation where government departments no longer have the expertise to make good or informed decisions when awarding government contracts.

Both government and individuals must rely on the professionalism of our members and that professionalism must be encouraged. I don't believe that competition policy is doing this.

I was pleased to note that the NCC in its publication "Considering the Public Interest under the National Competition Policy" states that subclause 1(3) of the Competition Principles Agreement is "not about maximising competition per se, but about using competition to improve the community's living standards....", and it further states that it recognises the public benefit to include"improvements in the quality and safety of goods and services....". I hope that the many authorities involved will recognise this.

Professional people respond well to the trust placed in them by the community to provide quality and safety in their service. To do this they must be able to charge a commensurate fee.

If, however, they are forced to compete, especially in regard to price, quality and safety will be diminished. That trust and the response to that trust will also be diminished.

Professional standards involve many criteria apart from price.

The provision of services is quite different to the provision of goods. The quality of a service can readily be changed to match the price and this is not in the public interest.

I believe Michael Peck, who will be speaking after me, will be illustrating this in his address in regard to the construction industry. He will be showing how the consultants' fees have been reduced dramatically but their incomes have not declined proportionately. In other words, services and standards are being adjusted to meet the market.

In my own case I can speak with some personal knowledge of my practice of dentistry.

Virtually every service which I provide to my patients on a daily basis could be done by me in half the time if I chose, but, need I say, it would not be in the public interest.

Post operative complications would increase only marginally but long term failure (with accompa-

nying increase in permanent damage and costs) would increase markedly. By that time my patient would in most cases have no idea whether it was my work which was at fault.

Under pressure of price competition, it is relatively easy to manipulate (falsify) item numbers so that the cost to the patient is minimised through increased health fund rebates.

As I currently work, I need do none of these dubious practices and in fact there are many occasions where patients request treatment which may or may not be expensive and I persuade them not to have it where I believe it to be inappropriate.

There is no price competition or profit motive involved in this type of service, there is "professionalism" and the freedom to charge what the service is worth. I believe this is in the public interest. Thank goodness I am not answerable to an outside owner of my practice.

There are hundreds of thousands of professionals in this country who are providing this kind of service.

The cynics among us in government and in the community will not believe this statement and will point to the small minority of so-called professionals who are only profit motivated. The introduction of a third party into the provider-client relationship such as we see with Medicare, bulk billing and the health funds unfortunately tends to encourage profit-motivated unprofessional behaviour. We all regret that this exists and I believe that the importance of service to the community and ethical behaviour should be emphasised continually in all undergraduate courses and by all professional organisations.

professional associations

I mentioned earlier that professional associations formed together in the late middle ages for the purposes of controlling the conduct and standards of their members. Their priorities were quite different to the merchant guilds. Today, professional

associations still work to promote high standards among their members and, through this and various other ways in their areas of expertise, to promote the welfare of the community as a whole. There is still a tradition or a requirement among members of these associations to share all knowledge, research and new techniques. This is quite different to commerce and business where new ideas are kept secret or patented in order to maximise profits.

This sharing for the benefit of all is also part of our professionalism.

Professionalism may be at risk under competition policy.

It is a valuable community asset and, if it is lost, then that will not be in the public interest.

**REVIEW OF THE VICTORIAN VETERINARY
PRACTICE BILL 1997**

**Submission from the National Office of the
Australian Veterinary Association**



submission from the national office of the Australian Veterinary Association regarding the review of the Victorian Veterinary Practice Bill 1997

executive summary

- The Directors of the Australian Veterinary Association (AVA) endorse the submission of the Victorian Division of the AVA and recognise other submissions made by various Branches of the Association.
- AVA has a policy of promoting uniformity of veterinary legislation across the States and Territories of Australia and New Zealand and endorses the Mutual Recognition legislation to facilitate this and allow mobility of veterinarians across jurisdictions. AVA supports the call for national reviews as a means of achieving this.
- It is essential that changes to veterinary legislation which give effect to competition policies do not weaken our ties with other countries by confusing our trading partners.
- AVA submits that it is essential that foreign countries easily recognise Australian veterinarians, their qualifications and regulation to facilitate trade. It is important that any legislative changes maintain veterinary standards at an appropriate level to meet both national and international requirements.
- It is important that any legislative changes preserve the current level of protection offered to the community and animals by ensuring full accountability for the providers of veterinary or animal health services.
- Six specific issues of concern are addressed in some detail viz, the costs and benefits to the consumer, the word "veterinary" and forms of address, practice ownership, registration to practise, acts of veterinary science, and mutual recognition.

general

The Australian Veterinary Association, (AVA) as the national body representing veterinary surgeons has concerns for the legal basis of veterinary practice and, more importantly, for the welfare of the animals and of their owners.

AVA also has concerns that go beyond the immediate veterinarian / animal / client relationship. Treatment of animals may involve the use of drugs and chemicals with the potential for tissue residues, which may present human health and food safety risks. Animals may also have diseases capable of spreading to man (zoonoses). Veterinarians are first lines of defence against such risks.

The AVA is concerned regarding proposed amendments to Veterinary Surgeons Acts in a number of States and Territories. Amendments are generally proposed in response to competition policies emerging from the Hilmer Report. Superficially some of the measures designed to achieve competition appear to do so, but in fact either do not do so or introduce elements which significantly weaken the protection afforded by the legislation to the consumers of veterinary services or to the welfare of their animals.

specific issues of concern to the AVA

1 Costs and Benefits to the consumer.

The Competition Principles Agreement entered into by the Commonwealth, States and Territories states that "the guiding principle is that legislation... ..should not restrict competition unless it can be demonstrated that:

(a) the benefits to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition"

This mandates a review of costs and benefits so that the community can assess genuinely the implications of any change in the effects of the legislation.

No results of any estimates have been made public in respect of this Bill.

There appears to be reliance on the basic principle that an increased number of providers will reduce costs. It is clear that it is assumed that there will be a reduction in direct input costs of services. This may not be true as it cannot be a truly free market. More importantly those assumed short term reductions in costs to the community may be offset by loss of quality and breakdowns which lead to greater costs to the community. In the veterinary field there are many examples of these we will consider just a few examples.

It is well recognised that in risk analysis the most difficult events to cost and evaluate are the rare and catastrophic ones (say earthquakes as compared with motor accidents). We could quote many instances all around the world of disease misdiagnosis and mishandling which have led to establishment of diseases and to eradication programs which have taken decades to complete at horrific cost. Such diseases have had major influences on trade. It is this notion which is at the heart of Australia's conservative quarantine policies and early disease detection arrangements such as AUSVET-PLAN. These measures cost the community millions of dollars to maintain. Indeed the Commonwealth Government has recently provided an additional 74.6 million over 4 years to supplement animal and plant quarantine, public awareness of disease and early detection and diagnosis.

The effects on trade and consequently balance of payments and community resources through losses of trade resulting from disease and chemical residue problems are discussed below. Of greater concerns are public health and safety. Our freedom from rabies is no longer certain with emergence of the related lyssavirus which has caused human deaths in Australia. Early recognition and elucidation of this disease and the newly emerged equine morbillivirus, also a zoonosis, have greatly limited the human mortalities involved. They will however impact on every veterinary practitioner in Australia. Failure of diagnosis for these diseases will have serious consequences for the practi-

tioner, client and community, as is the case overseas. This is also a reason for severe restrictions on practice overseas.

In summary AVA believes the long term costs need to be assessed, not only the short term direct costs. AVA can provide disease examples if required.

NCC and ACCC see the community choosing services through "informed consumers". AVA believes that the sensitivity of any information process is limited and choice governed by perception and word of mouth information on failures. Consumers can address only the direct client/animal/veterinarian relationships. They have no means of addressing secondary issues of concern to the community such as the overall level of vaccinations to develop a protected community or of disease surveillance mechanisms (see zoonoses, wildlife and residues later in this submission).

AVA finds the notion that "informed consumers" will result from advertising campaigns like that of the Certified Practising Accountants as misguided. These campaigns are costly and will ultimately be a cost to the consumer. They would be beyond the resources of the smaller professions. Regular reinforcement would also be required.

Quality of service, prevention of overservicing, minimisation of suffering and other less definable community standards are demanding continuous improvement of skills and facilities through continuing education, professional liability and specialisation. It would appear from the Royal Commission in NSW that the teaching profession will be regulated following "problems". This move is counter to that being pursued in Victoria on veterinary legislation and demonstrates the need for regulation. Awaiting further crises is poor public policy.

Regulation of registered practitioners under the Bill will be ongoing and cost recovered from the profession. Government investigation of and responses to problems with non-registered practitioners will come from consolidated revenue, a cost to the community and a matter of equity are involved.

2 The use of the word "veterinary" in relation to registered veterinarians.

If the use of the word veterinary is suitably regulated in the Act the community, via the Board, has control over the duties and activities of persons using such a title and full accountability of such persons is ensured.

The use of this term, and the responsibilities that go with it, emerged essentially from the formation of the first modern veterinary school at Lyon in France in 1765. The subsequent development of formal training for veterinarians enabled the skills and knowledge possessed by such people to be objectively assessed for the first time. Legislation to restrict the use of the word veterinary to persons possessing formal qualifications emerged in the early part of this century. Such legislation is now common to most countries of the world, including our major trading partners.

Most countries rely on the definition of a qualified (registered) veterinarian in Australian legislation as being equivalent to or higher than the definition used in their own country. There must be no ambiguity in the terminology used for many reasons, particularly certification in trade. The shrinking world and the implications for trade based on veterinary certification of animals; products derived from them and animal genetic material require our full acceptance by the international community. Terms and forms of address are extremely relevant in trade. Sensitivities emerging from a rapid series of incidents regarding animal health and food safety have recently alerted foreign Governments to the importance of veterinary certification and inspection and their political and legal implications. Litigation is not uncommon.

Food safety issues, in which the veterinary profession have been integrally involved, have included outbreaks in humans of diseases caused by verotoxigenic forms of *Escherichia coli* (haemolytic uraemic syndrome (HUS)), *Salmonella* spp and *Listeria monocytogenes*. The veterinary profession have also been integral to the management and evaluation of the recent Bovine Spongiform En-

cephalopathy outbreak in the UK and protection of our own beef industry (Appendix A).

Privileges given to veterinarians under legislation are accepted along with the related responsibilities. These are; full accountability for their actions in the treatment of animal disease, relief of suffering in animals and services to government, the community and animal welfare organisations. Any weakening of the current legislative restrictions on the use of the word veterinary may result in an inability to enforce accountability in those persons providing the service.

On an international level as well as a national level, it is important not to make any legislative changes which could lead to confusion as to the meaning of a registered veterinarian. Any legislation, which registers veterinarians, should define appropriate qualifications and training. It should also specify that no person, other than a person with such veterinary training and qualification, may use any terminology, which implies that they are a qualified and registered veterinarian.

3 Limitations on practice ownership

Freeing ownership, to allow non-veterinarians to buy practices, superficially suggests increased competition. Under unrestricted practice ownership, a non-veterinarian or de-registered / un-registered veterinarian could own and operate a veterinary practice and employ registered veterinarians to provide veterinary services.

Veterinary practice is the business of providing a veterinary service for a fee and should not be confused with the ownership of the premises from which the service is conducted. Most current veterinary legislation does not restrict the ownership of the physical premises to a registered veterinary surgeon and in many cases the premises are actually leased and not owned. The provision of veterinary services for a fee or reward should be restricted to registered veterinarians to ensure full accountability for the quality of work performed. If a registered veterinarian fails to conform to accepted

community standards of professional behaviour, the veterinary boards are currently able to remove or suspend their registration and hence their ability to legally earn a living as a veterinarian.

Unrestricted practice ownership would effectively negate the majority of legislative restrictions now imposed upon veterinarians to make them accountable for their actions. If the owner of a veterinary practice is not bound by the same rules of accountability as a registered veterinarian, it is quite possible that they may exert undue pressure on their employees to provide sub-standard or illegal services. Under these circumstances, only the registered veterinary employee could be disciplined by de-registration. Not only would the veterinary board be unable to discipline the practice owner, the practice owner would be free to continue in business using newly employed veterinary surgeons. This is clearly not in the public interest.

Unrestricted practice ownership would also allow veterinarians, de-registered for malpractice, to continue to profit from veterinary practice, by the simple expedient of employing registered veterinarians to work for them. This is clearly not in the public interest.

The simplest and most effective way to control this situation is to state quite clearly that only a registered veterinarian may profit from the provision of veterinary services; i.e. only a registered veterinarian may own a veterinary practice. An alternative would be to register the owner of the veterinary practice, which introduces further complications as to how to address their credentials and suitability for ownership.

The principal issue is accountability. Current practice allows for effective and monitored regulation, which is consistent with the principles of the Hilmer Report.

The standards of veterinary premises obviously need some regulation, given the nature of the work that is undertaken in them.

In most States, veterinary boards under existing legislation, carefully regulate the standards of the premises from which a veterinary practice is conducted. Terms such as "clinic" or "hospital" have particular meaning in relation to equipment and building standards. The need for such regulation is to provide for consumer protection and animal welfare due to the particular nature of the tasks performed in the facility.

4 Registration of trained lay persons to perform acts of veterinary science.

The only restriction placed on being a registered veterinarian is the need to obtain the training and qualifications necessary for registration. Competition in this sense is complete. The training and qualification requirements are there, not to act as a gateway policy, but to provide the consumer and government with sufficient safeguards and quality control to ensure appropriate animal care.

There are some veterinary procedures for which technicians may receive training and perform capably at the technical level. Superficially this can appear to create competition with community benefit. Training of technicians in specific veterinary tasks has actually been of greatest benefit in remote regions where animals and their owners would be deprived of some animal health services without them.

Where lay persons are trained to perform specific veterinary tasks there has to be some means of ensuring their continued competency to perform such tasks.

There are several ways in which this objective could be achieved. One concept is for the provision of direct or indirect veterinary supervision. The veterinarian then takes the responsibility for all outcomes. Because the veterinarian is accountable to the community under legislation, an effective line of control could be maintained over the quality of services provided.

Another proposition is for registration of such trained technicians. Registration and assignment

of competencies is dependent on the level of primary training and continuing education. In the absence of registration there is no identification or sanction against the incompetent or corrupt performer. Registration is for consumer protection and reliance on private litigation does not adequately address the protection of the welfare of the animal.

There is also an argument for less involvement of trained lay operators in the provision of animal health services. Community demand for improved animal welfare is leading to a greater rather than lesser degree of qualified veterinary involvement in animal health procedures. Highly technical procedures, such as embryo transfer, which require penetration of body organs are capable of causing considerable harm without an appropriate understanding of anatomy, physiology and sterile technique. Serious welfare consequences may occur if these procedures are not performed correctly. Even in less technical areas, such as pregnancy diagnosis, undiagnosed pregnancy or the presence of unexpected disease process or abnormality such as a tumour may radically change the nature of such procedures and require informed judgements. Trained lay operators are unable to provide an overall approach to disease management due to the limitation of their training.

5 Acts of Veterinary Science

Specific "acts" to be performed only by veterinarians are defined in legislation in many States and countries. There is a temptation to remove such definitions in the suggestion of improved competition. In some countries, such as New Zealand, where this has been done there is complementary legislation which maintains adequate controls over such acts. For example, legislation for animal welfare and control over the use of medications, which require many procedures to be performed only by a registered veterinarian. This is much more difficult in Australia under its federal constitution and divided state responsibilities. **In Australia restriction of the performance of such "acts of veterinary science" to registered veterinary surgeons, in the Veterinary legislation, is the major protection of the community and the animal.**

The provisions of the Health Act in most States, allow effective regulation of restricted chemical substances and medications.

6 Mutual Recognition

AVA policy supports uniform veterinary legislation and registration requirements across Australia and New Zealand. It is necessary for competition and for healthy development of expertise that veterinarians, as with other professionals, have job mobility within the country. In addition, many veterinarians work across the borders of the states and have to be registered in more than one state. It is confusing if legislative requirements vary dramatically between states.

AVA supports the intent of the mutual recognition legislation being enacted following the decision of the Council of Australian Governments. AVA sees a need for any proposed changes in legislation to be well coordinated across States and the subject of national, rather than state reviews.

The Directors of the AVA submit these comments and are available for in person clarification or expansion if required.

*Australian Veterinary Association
August 1997*

appendix a

background to the role of veterinarians in international and national trade and disease issues

Australia is a major exporter of animals, their products and genetic material and has much to lose should exotic diseases be introduced or should our exports not meet the import requirements of importing countries.

The spread of diseases of animals around the world and the emergence of new animal diseases, some of them zoonoses, is of concern to authorities and veterinarians worldwide. Veterinarians are at the forefront of disease prevention and control programs and their qualifications have to be of the highest standard and integrity.

A massive outbreak of foot and mouth disease in Taiwan has totally halted that country's trade in pig meat with Japan (some 300,000 tonnes per annum). In Australia the new diseases caused by equine morbillivirus (bat paramyxovirus) and bat lyssavirus (one of the rabies group) have emerged and caused human fatalities and influences on trade and human movement domestically and internationally. Lyssavirus is potentially a serious zoonosis; closely related to rabies it may like the other members of this group cause fatal illness to man if it spreads into the companion animal population. Currently it is a serious risk to those handling wildlife such as fruit bats.

At the same time there have been food safety emergencies in Australia and other countries not the least the outbreak of meat borne illness caused by *Salmonella* and *Escherichia coli* bacteria. The latter has caused haemolytic uraemic syndrome requiring kidney transplants in a significant number of people including many children. The emergence of bovine spongiform encephalopathy (mad cow disease) in UK and its probable link with the human Creutzfeldt Jakob disease has affected the consumption of animal products and distorted trade. These diseases have seriously affected the use of meat products.

Concerns regarding pesticide and antibiotic residues have also predominated. The incident involving the agent "Helix" which was used on cotton crops but left residues when cotton trash was fed to animals during drought, caused losses of millions of dollars in lost export meat trade.

These examples demonstrate the extension of the role of the veterinarian beyond the traditional public perception as a physician and surgeon of individual animals with responsibility to patient and owner alone.

world trade

The formation of the World Trade Organisation from the General Agreement on Tariffs and Trade has created new technical disciplines in trade to minimise trade impediments due to quarantine. These have been formalised in the new Sanitary and Phytosanitary Agreement (SPS agreement) which is mandatory for WTO members.

The SPS Agreement establishes a number of important principles, these include:

- Harmonisation (the use of international rules for quarantine requirements)
- Scientific basis (where international rules are not employed because of the particular nature of the risks to the importing country and must be applied consistently to all countries)
- Equivalence (achievement of outcomes by different means)
- Transparency (consultation and openness within and between nations)
- Risk analysis (to justify level of acceptable quarantine risk accepted)
- Regionalisation (to allow entry to international trade of produce from countries with disease free zones under specific disciplines to demonstrate freedom)

- National treatment (treating the imported product no more stringently than domestic product)

These disciplines are being applied by the Australian Government and the veterinary profession as a whole, government and private, small and large animal, field and laboratory, is involved. This is increased with the moves in Government at all levels for third party provision of veterinary services and accreditation of private veterinarians to provide government services. This is allowed under international rules and is done in other countries such as USA and Europe.

The assurance of the standards and qualification of veterinarians in Australia are enshrined in the state legislation controlling their activities.

risk assessment

Risk assessment has been formalised in the Sanitary and Phytosanitary Agreement.

Where animals and animal products are concerned the *International Animal Health Code* of the Office International des Epizooties is recognised as the international rule. SPS requires scientific justification for variation from the Code or for the basis of quarantine measures for commodities for which Codes have not yet been developed.

The International Animal Health Code now includes a Section on Risk Analysis. This section has four chapters, viz

- Guidelines for Risk Assessment
- Evaluation of Veterinary Services
- Zoning and Regionalisation
- Surveillance and Monitoring of Animal Health

All of these Chapters are important factors in this submission because they affect the way in which the veterinary profession underpins trade in animals, animal products, genetic material and animal based biologicals.

The Office International des Epizooties (OIE) has developed a model which is complex and requires veterinary technical input which must withstand intensive peer review in the Dispute Settlement Panels of the WTO.

Australia is currently involved in such a case involving our refusal to accept uncooked Canadian and US salmon, based on Australia's assessment that it may introduce exotic diseases of those species into Australia. In this case Australia does not follow the international rule of the OIE but relies on scientific justification under SPS developed after the widest consultation.

Clearly Governments do not have the in-house expertise for this level of scientific justification and other interested organisations provide the veterinary expertise necessary.

A committee headed by Professor Malcolm Nairn, in 1996 reviewed quarantine policy and practice and the Government's response to the committee's report was published as a policy paper in August 1997.

The Government has accepted the Committee's recommendations regarding establishment of a public awareness campaign, for a partnership with the community in the detection and management of disease incursions, in enhanced risk analysis procedures and in public consultation. The Government has provided an additional **\$76 million to augment these procedures over the next 4 years.**

A feature of AQIS's relationship with the states and territories, the scientific community and the public is the openness of its establishment of quarantine policies and protocols.

Each protocol is circulated for comment and the peak industry organisations and scientific institutions are advised of protocols in which they might have an interest. Where necessary meetings are convened with stakeholders and interested parties. Many involve written circulation and coordination of public comment and publication and circulation of documents before protocols are finalised.

AVA is a recognised stakeholder and provides input into all AQIS protocols in the national interest as it has the required veterinary disciplines and skills.

accreditation of private veterinarians

The Commonwealth and the States, through the Agricultural and Resource Management Council of Australia and New Zealand are developing schemes for accreditation of veterinarians to carry out services on behalf of Governments. At the State level such activities include disease control and eradication programs for endemic diseases such as Johne's disease of cattle and sheep and certification for interstate movement. At the Federal level they include inspection and certification of animals and genetic material and certain products for export and similar activities in import quarantine, especially supervision of post quarantine surveillance programs.

The interim program for livestock pre-export preparation is in place. Practitioners provide certification to the Australian Quarantine and Inspection Service. AQIS issues the final veterinary certification on this basis. The whole regime is under peer review by overseas authorities.

These programs involve large and small (farm and companion) animal practitioners.

A new system of meat inspection based on quality assurance principles is currently being trialed and submitted to overseas authorities and international organisations for acceptance. This method is designed to go beyond the physical examination of the carcass, which is the main process now and monitor for chemical residues and microbiological contamination. This makes the process more technically complex but also takes the process back to the farm to incorporate on farm procedures in a quality assurance continuum. "Cattlecare" sponsored by the Cattle Council of Australia is one on farm program.

The role of the private rural practitioner may be working at an abattoir on contract to provide relief

for Government employed veterinary officers or working at establishments which are small, remote, or operate less than full time. Similar veterinary activities are proceeding with other animal industries. The on-farm programs will involve the practitioner in prescribing medication and advice on withholding periods for animals and products after their administration.

The trial meat inspection will reduce costs to the producer and meat processor as well as providing additional means of meeting importing country requirements. A detailed submission has recently been made by the Australian Government to a public inquiry in the United States. AVA provided a supporting submission. The outcome is awaited.

The International Animal Health Code provides for private accredited veterinarians to perform these tasks but this is on the basis that they are fully qualified and registered. The "Code" also provides for Evaluation of Veterinary Services (see elsewhere in this submission). The international community through the OIE and in the case of animal derived foods the Food and Agriculture organisation of the United Nations through its Codex Alimentarius Commission, which sets world food standards, accepts the evaluation of veterinary services for these purposes.

Australia's State and Commonwealth services are regularly reviewed on ground by many countries, most notably USA and the European Union.

Demonstration of our national and zonal freedom from disease is done by surveillance and monitoring. This too is coming under increased scrutiny and the "Code" is gradually being amended to include specific methods all subject to peer review between countries. Other parts of the world do not recognise anyone other than the registered veterinarian as the basis of such systems.

*Australian Veterinary Association
August 1997*

**THE AUSTRALIAN VETERINARY ASSOCIATION (VICTORIAN DIVISION)
SUBMISSION RE: VETERINARY PRACTICE BILL 1997 (VIC)**

15 August 1997
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executive summary

The Australian Veterinary Association (AVA) is Australia's foremost professional veterinary association with 1,100 members in Victoria, each of whom must be a qualified veterinarian. In all, the state has 1,650 qualified veterinarians. The AVA is dedicated to excellence in veterinary science, regulating the profession to eradicate unscrupulous or substandard service and the health and welfare of all animals.

The Victorian Government is currently considering the Veterinary Practice Bill 1997 (Vic) (the *Bill*), which establishes the Veterinary Practitioners' Registration Board of Victoria (*New Board*) to replace the current scheme of regulating veterinary surgeons.

The AVA supports the review of veterinary practice as part of an overall review of all Health and Medical Practitioner legislation in Victoria, and welcomes and supports the proposed substantive changes to be made to:

- registration procedures
- the structure of the New Board, and
- its proposed representation and investigation techniques.

However, there are two fundamental elements of the Bill that the AVA strongly opposes and is determined to see amended. These are:

1 The absence of a restriction to practice

As proposed, the Bill fails to effectively regulate who can perform acts of veterinary surgery or medicine, leaving the way clear for animal health and welfare to be at the mercy of the non-qualified "quack" or the "backyarder". Prohibition established under Clause 57 of the Bill will prove inadequate to deal with the mischief it is intended to overcome.

Potential outcomes -

Victorians expect that people who call themselves veterinarians and operate veterinary practices are properly qualified and subject to regulation by independent authorities. The absence of a restriction to practice will legitimise veterinary practices (such as making diagnoses, giving advice, and performing treatment including surgery) by people who are unqualified or inexperienced in undertaking the procedure. There will be an almost total lack of public accountability since these "veterinarians" will not be subject to the sanctions of the New Board.

The responsibility of veterinary practitioners extends beyond merely the care of domestic pets. Veterinary practitioners are primarily responsible for the eradication and control of diseases which affect animals and which impinge on the trade of livestock and livestock products at a state level, nationally and internationally. The export of these products is of great importance to the continued strength of Australia's agricultural industry. It is critical that our existing favourable health status is maintained through the appropriate use and regulation of veterinary services (practitioners). The absence of a restriction to practice will impact directly on the continued viability of our agricultural industry.

2 The deregulation of veterinary practice ownership

The Bill proposes to remove restrictions on the ownership of veterinary practices. While the intent of the Bill is acknowledged, it opens the door to non-veterinary business interests who are driven by profit rather than principles, to overtake the spirit of veterinary care, namely animal health and welfare.

Potential outcomes-

This move is a prescription for the interest of the animal (and its owner) to be overtaken by vested interests countering the very ethics under which veterinarians practise and conduct their businesses.

Under the Bill, feed, pharmaceutical and rural supply businesses could all own veterinary practices enabling them to develop horizontal marketing strategies and mislead animal owners into using unnecessary services, medication and expenses. Immature or inexperienced veterinary practitioners could be employed by these businesses who would not be in a position to withstand a direction to "push" pharmaceutical products without restraint and without concern for industry standards such as chemical residue levels and antibiotic resistance.

The issue of ownership is a matter which involves significant public interest issues and questions with respect to the efficacy of competition principles generally. The benefits of the potential enhancement in competition are vastly outweighed by the concerns for public health and safety which are not adequately addressed by the proposed legislation.

The AVA has prepared a submission to appropriate Victorian Ministers to address its concerns under the Bill. This submission focuses on the two particular aspects of the Bill noted in 1 & 2 above, which are particularly relevant in the context of public interest issues, the inadequacy of the proposed legislation to deal with potential contraventions and concerns about the general administrative efficiency of the Bill.

The Victorian review of veterinary practice regulation is at the forefront of other reviews occurring in other States. With continued push towards mutual recognition, and the attempts to achieve uniformity of regulation on a national level, it is important that Victoria as a "leader" in this area is not seen to be setting the standards at too low a level.

It is the AVA's view, the Bill should be amended to address the fundamental concerns in relation to who can practise and who can own a practice. If left uncorrected these deficiencies will impose significant and unchecked risks on public health and safety and have the potential to undermine the high ethical and professional standards required of veterinary care. If persons who are not registered as

veterinary surgeons (and therefore are not subject to oversight by the new Board) are able to own and operate veterinary businesses (diagnosis and treatment including performing surgery) then the AVA believe there are grave implications for animal welfare, international trade and public health and interest generally.

To facilitate the effective administration and regulation of veterinary practitioners it is imperative that changes are made to the Bill as set out in the body of this submission.

the Australian veterinary association (victorian division) submission re: veterinary practice bill (1997) (vic)

1. introduction

- 1.1 The Australian Veterinary Association (Victoria Division) (the AVA) supports the review of veterinary practice as part of an overall review of health and medical practitioner legislation in Victoria. As part of this process the Victorian Government has recently introduced the Veterinary Practice Bill (the Bill). The Bill establishes the Veterinary Practitioners Registration Board of Victoria (the New Board) which will replace the existing Veterinary Board of Victoria (the Board) set up by the Veterinary Surgeons Act 1958 (the Existing Act). In the second reading speech Mr Gude noted that the Victorian Government's intention was for "the reforms (to) bring the Board into line with similar legislation covering other professions where the principle of peer review and public representation on the Board provides the basis for the standard of professional services."
- 1.2 The AVA has a membership of over 1100 Victorian veterinary practitioners. Its primary role is to support and promote excellence in the veterinary profession through service to members and the community. The AVA welcomes and supports the proposed substantive changes to be made to registration procedures; it supports the structure of the New Board, and its proposed representation and investigation techniques.
- 1.3 However, two fundamental aspects of the Bill have been identified by the AVA as requiring further consideration. This review will focus on the concerns of the AVA with respect to these aspects in terms of public interest issues, the inadequacy of the proposed legislation to deal with potential contraventions and concerns about the general administrative efficiency of the Bill.

- 1.4 The two major concerns to be addressed by this submission are briefly:

- (a) The absence of a restriction to practice

Clause 57 of the Bill is intended to create an offence for the practice as a veterinary practitioner by an individual who is not appropriately qualified or registered. It is the AVA's view that this prohibition will prove inadequate to deal with the mischief it is intended to overcome. In the context of significant public health and safety issues at stake here, the failure to make appropriate amendments to the Bill may prove problematic.

- (b) The deregulation of veterinary practice ownership.

The Bill proposes to remove restrictions on the ownership of veterinary practices. Practice ownership is a matter which involves significant public interest issues and questions with respect to the efficacy of competition principles generally.

It is submitted that the benefits of the potential enhancement in competition flowing from ownership deregulation are outweighed by the concerns for public health and safety which are not adequately addressed by the proposed legislation.

Before dealing with these two issues the AVA wishes to make some general observations on the review process.

2. review of medical and health practitioner registration acts

2.1 The Review Process

One of the key policy recommendations of the Hilmer Report¹, now implemented through the Competition Law Reform Act, the Competition Code and the Competition Principles Agreement (CPA), is a commitment by State, Territory and Commonwealth Governments to review all legislation which may be "anti-competitive" in nature. The CPA and the reviews of State and Territory veterinary practice rules that are occurring as a result, are part of a wider competition policy process that is occurring nationally. The agreed terms for such legislation reviews are set out in Clause 5 of the CPA. In particular it states that:

"the guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition".

The removal of anti-competitive elements from health practitioners registration legislation has been adopted by the Victorian Government, necessary to fulfil its commitments under the CPA. According to the principles stated above, any review must determine whether the powers and activities within existing legislation create a net public benefit and whether the objectives are being achieved in a manner that least restricts competition.

It is in this context, that any removal of (i) anti-competitive restrictions on the practice of veterinary science and (ii) ownership restrictions, should be assessed.

2.2 Public Interest Issues

The competition policy principles as set out in the Competition Law Reform Act, the Competition Code and the CPA referred to earlier, requires Parliament to, amongst other things, take account of vital public health issues concerned with aspects of veterinary practice. It is the AVA's view that the changes proposed by the Bill are likely to result in significant problems of service quality which are inadequately addressed by alternative arrangements. As such the AVA recommends that these changes be dropped or replaced by alternative proposals.

The basic purpose of the Bill is to ensure that the well being of animals and the public interest is protected through the maintenance of standards for animal health service providers. The responsibility of veterinary practitioners extends beyond merely the care of domestic pets. Veterinary practitioners are primarily responsible for the eradication and control of diseases which affect animals and which impinge on the trade of livestock and livestock products at a state level, nationally and internationally. This task will impact directly on the continued viability of our agricultural industry.

Incorrect diagnosis or failure to identify a notifiable or exotic disease may have significant implications, not only for the particular animal being treated, but also the public at large. Communication of such diseases may have negative consequences for the entire agricultural industry with potential impact on all forms of trade and commerce both nationally and internationally.

Australia is fortunate to have been spared all the major epidemic diseases of livestock and is relatively free of other serious animal pests and diseases. This is due to a very large extent to the concerted attempts by Government in the regulation of agriculture, customs and health practitioners. Despite these efforts outbreaks of serious diseases, both exotic and new do occur, and can have significant socio-economic consequences on a national level. The outbreak of an apparently new viral disease - the

¹ Independent Committee of Inquiry (Hilmer Report), National Competition Policy Review, AGPS, Canberra, 1993.

equine morbilli virus pneumonia (which resulted in the death of a well known horse trainer in Brisbane 1994), provides a salutary lesson that infectious diseases are not static.

Newly emerging diseases affecting both animals and humans include such recent scares over Japanese Encephalitis in the Torres Strait and Southern New Guinea, and the bat lyssavirus in Queensland. In addition, we have seen serious outbreaks of diseases overseas eg: Bovine Spongiform Encephalopathy (BSE) - the "Mad Cow" Syndrome. The outbreak of such epidemics can have a crippling effect on an economy heavily reliant on its agricultural industry.

Appropriately trained and registered veterinarians are our first line of defence. They are alert to the possible occurrence of such exotic diseases and are completely trained in diagnoses and disease control. Early and accurate diagnosis is essential to ensure prompt control and eradication. The significance of these public health and safety issues can not be understated - a point not lost on Mr Gude as he stated in the Bill's Second Reading speech: "Veterinarians in Government service and private practice provide the basis for control of diseases of animals which impinge on public health, interstate and international trade in livestock and livestock products and the general wellbeing of companion, competition and recreational animals."

The proposed changes may well undermine the efficacy and quality of veterinary services. In these circumstances the AVA believes there is a need for the retention of more effective control mechanisms. There is no doubt amongst our members and nor should there be amongst our communities representatives, that these are issues of the greatest importance to the public interest. The Victorian legislature has continually recognised the importance of animal welfare issues. The recent enactment of the Domestic (Feral and Nuisance) Animals Act 1994 and the Prevention of Cruelty to Animals Act 1986 clearly evidences this fact. It is in this context that the two specific issues in the Bill adverted to earlier are addressed.

3. the absence of a restriction to practice

3.1 Preamble

The Bill establishes a comprehensive system for the registration of qualified veterinary practitioners. This registration system to be administered by the New Board appears to be aimed at ensuring that veterinary practitioners of the prescribed standard and quality will provide veterinary services within Victoria. The concern for the standard and quality of health care and veterinary services warrants the development of a registration system which will help to ensure veterinary practitioners obtain appropriate qualifications and training. Despite this intent, it is the AVA's view that the proposed regulatory framework will be inadequate to deal with the mischief.

3.2 Restrictions on Practice Under the Existing Legislation

The scheme under the Existing Act is designed to limit the practice of veterinary surgery or medicine to appropriately qualified and registered veterinary practitioners. The ability to perform acts of veterinary science is predicated upon the obtaining of registration.

Section 15(1) of the Existing Act provides a clear restriction upon the performance of veterinary acts. The principal "offence" under the legislation is:

"No person other than a person registered under this Act as a veterinary surgeon shall practise veterinary surgery or veterinary medicine."

The Existing Act does not set out precisely what constitutes veterinary surgery or medicine. It does not clearly delineate the boundaries of what activities are to be confined to veterinary practitioners. Rather it is left to the Board, as the regulator of the veterinary profession, to authorise certain acts as being acts of veterinary surgery or medicine, which can only be performed by registered veterinarians. At the same time other acts specifically exempted by the Board can be performed by non registered practitioners.

Section 15(1) is viewed by the AVA as the cornerstone of the proper regulation of veterinary practise. The AVA strongly believes that the institution of a system of registration can only be of value where registration entitles the person to perform certain acts which are otherwise prohibited. The prohibition in section 15(1) is supported by section 15(2) and (3) of the Existing Act which prohibit the holding out by persons (other than those qualified or registered) that they can perform acts of veterinary practice. The Existing Act further imposes a limit upon the use of the term "veterinary".

These prohibitions are supplemented by restrictions upon the use of certain substances under the Drugs, Poisons and Controlled Substances Act 1981 (Vic) (the DP&CS Act). In the performance of acts of veterinary surgery or medicine the practitioner will often need to employ a variety of drugs or poisons, which are treated as controlled substances under the DP&CS Act. This Act provides a framework for the protection of the public from the harm which could follow from the misuse or abuse of the drugs and poisons which come under the control of the Act. It sets out in Schedule 4 and 8 those drugs and poisons which Parliament has deemed to be highly restricted. Section 13 of the DP&CS Act provides that only certain "authorised" persons may be in possession of such materials. Registered Veterinary Surgeons registered under the Existing Act are authorised persons for the purposes of s13.

The DP&CS Act operates in conjunction with the Existing Act to regulate veterinary conduct by controlling access to scheduled medicines. The existing scheme operates to regulate non-registered practitioners performing acts of veterinary surgery or medicine, by denying them access to scheduled medicines and imparting on the Board broad powers to regulate the practice of acts of veterinary surgery or medicine. As will be shown the removal of the New Board's ability to regulate non-registered practitioners will raise significant problems.

3.3 The New Provision

The Bill does not tackle the practice or purported practice of veterinary surgery or medicine. Rather, the equivalent of s15 (viz Clause 57 of the Bill) sets

out "offences" which relate only to the use of the title "registered veterinary practitioner" and to "claims" to be registered or qualified to practice as a veterinary practitioner. It contains no restriction upon the practice of veterinary surgery or medicine. In essence so long as a person does not say that he or she is a registered veterinary practitioner, or otherwise represents that he or she is qualified to act as a veterinary practitioner, that person will be free to carry out activities which come within the scope of the practice of veterinary surgery or medicine.

The proposed clause provides:

"Clause 57: Offences

- (1) *A person who is not a registered veterinary practitioner must not:*
 - (a) *take or use the title of registered veterinary practitioner or any other title calculated to induce a belief that the person is registered under this Act; or*
 - (b) *claim to be registered under this Act or hold himself or herself out as being registered under this Act; or*
 - (c) *claim to be qualified to practise as a veterinary practitioner."*

The AVA has received legal advice that as the prohibition in proposed Clause 57 is intended to operate as a criminal provision, it will be interpreted strictly. The advice received suggests that it will not be possible for persons to be successfully prosecuted if the activities which they engage in are not specifically covered by the language of the provision. The courts in Victoria, endorse a strict and literal interpretation of provisions involving a criminal element. The principle of strict construction of penal statutes has been widely applied. The rule historically stemmed from the desire of courts to mitigate the effects of harsh penal statutes. Yet this approach is also applied to provisions such as clause 57 of the Bill where sanctions include deregistration and pecuniary penalties.

In the AVA's view the absence of a restriction to practice will severely undermine the function of the registration process. What is the purpose of a regulatory system where unregistered or deregistered practitioners may practice unchecked and uncontrolled provided they make no "claims" or assertions with respect to their registration or qualifications? Where the public is left unprotected from unscrupulous practices then the Bill will not achieve its main aim, which is to: "... protect the public by providing for the registration of veterinary practitioners ... [and] regulate the conduct of veterinary practitioners."²

The AVA submits that this situation will seriously undermine the regulation of acts of veterinary surgery or medicine, and could easily result in a significant decline in the standard of service quality and in the detection and diagnosis of animal disease.

As such it is the AVA's view that the approach taken in the Existing Act (ie: s15(1)) deals in a more appropriate fashion with the problems caused by both unregistered and deregistered veterinary practitioners attempting to practise in the area (whether holding themselves out as registered practitioners or not).

3.4 Situations unlikely to be covered by the Bill

Under the Bill it appears that if an unregistered or a deregistered person engages in veterinary practise in breach of the spirit of the Bill, the New Board's only recourse will be to launch a prosecution under the provisions in Clause 57. This would have to proceed on the basis that the person "claimed to be qualified to practice as a veterinary practitioner" or "claimed to be registered" when not registered. If that individual does not claim to be so qualified or registered yet continues to practise acts of a veterinary practitioner it is quite likely that a court will not find that the relevant person has contravened the Bill.

The AVA has identified and documented numerous situations where individuals could escape liability under the new provisions defeating the function of a registration system in the first place. This

problem has been exacerbated by the fact that the new Bill has removed the restriction on the use of the term "veterinary". In this way a person may assert he or she can perform acts of a veterinary nature without claiming to be a registered or qualified practitioner. The AVA contends that this situation will prove extremely problematic for the effective regulation of the industry as the following scenarios demonstrate.

3.4.1 Unregistered Persons Performing Acts of Veterinary Care

- Government employed veterinarians not required to be registered

The AVA acknowledges that there has been some debate surrounding the employment by Government departments of non-registered veterinary practitioners often overseas graduates. This has been a common practice in the past.

Under the Bill overseas graduates (not eligible to be registered as veterinary practitioners until such time as he or she passes the relevant veterinary examinations) would not be prevented from engaging in veterinary practice provided they do not claim to be registered or appropriately qualified if they are not. The Bill does provide for their registration under the new category of "specific registration" provided for in Clause 7 (see 3.6). Under this system the New Board must ultimately determine whether such candidates may obtain specific registration.

Government departments, particularly the Australian Quarantine and Inspection Service (AQIS) (within the Department of Primary Industries and Energy), has, in the past, employed non registrable veterinary graduates to engage in meat inspection and quality assurance services in both the export and domestic meat industry at abattoirs and meat processing plants in Victoria and nationally. Similarly, at State level, the Department of Natural Resources and Environment (DNRE) in Victoria may, under the provisions in the Bill, employ non registered veterinarians to perform disease diagnosis, prevention, control and eradication activities, should DNRE so choose. Although they may be

required to perform acts of veterinary surgery or medicine, and may be registered under the terms of clause 7, as noted above, there is no requirement in the Bill for veterinary graduates employed by such Government agencies to be registered, unless they hold themselves out to be registered. This is not likely to be a compelling argument for such employees to become registered under the provisions of the Bill.

A major concern to the AVA, with the use of non registered veterinary practitioners in the employment of a department such as AQIS, occurs in a situation where say, the employee certifies either livestock or livestock products for export and it is subsequently found that this certification is false or deficient and the shipment is ineligible for entry to the country to which it has been sent. As the certifying "veterinarian", in this example, is unlikely to be registered with the New Board, there will be no external disciplinary body which can take that person to task. In this way, the Government employed veterinarian is not accountable to any external or independent body, and the power of the New Board to administer professional standards across all members of the veterinary profession has been taken away.

Whilst the employer may act to discipline the relevant person there is no guarantee that the same standards as adopted by the New Board will be applied in dealing with the problem.

A practical example of such a situation will arise where an AQIS veterinarian is requested to certify a shipment of export beef as "bull beef" when the export abattoir has not processed a sufficient number of bulls to give credibility to this certification. In this context where a registered veterinary practitioner gives a false certification, that person not only loses his or her credibility and possibly contract with AQIS, but is subject to disciplinary action by the New Board. However, if the relevant person providing the certification is a non-registered veterinarian employed by AQIS, especially if that person engages in such bad practices (ie. the provision of false certification for export purposes), the employee can not be disciplined by the New

Board. Although that person may be sacked he/she will not face the risk of losing professional status. A change of employment in other capacities remains a possibility. Under the present system, the integrity and security of an AQIS veterinarian's signature has been carefully guarded through the mandatory registration of individuals performing acts of veterinary medicine and/or surgery. It is felt that the reputation of the New Board and the reputation of the profession may suffer if "exceptions" such as that described above are allowed to occur through a loop hole in the legislation regulating the profession.

In the context of Government employees, if the Bill remains unchanged the Board estimates that some 100 of the current 1,657 registered veterinary practitioners in Victoria will not see the need to re-register. The integrity of veterinary certification for livestock and livestock products will be at stake if this occurs (see also 3.4.3). If Government employed veterinarians are no longer required to be registered, the evaluation and perception of the integrity of Australia's veterinary services amongst overseas importers of Australia's livestock and livestock products will be downgraded if not seriously compromised.

• Veterinary Nurses

A novel pet food promotion has recently employed veterinary nurses to make routine monthly home visits to supply pet food and to provide health checks for companion animals in Victoria. Veterinary nurses are not qualified nor registered as veterinary practitioners. In these circumstances, they are not claiming to be so registered nor are they holding themselves out as having the relevant qualifications. However, by engaging in the clinical examination of domestic pets they are, nevertheless, engaging in the practice of veterinary medicine.

The promoters of this scheme suggest that any abnormalities will be reported by the veterinary nurse to a qualified and registered veterinarian or that the owner will be advised to visit their own veterinarian. However, in circumstances as prescribed

under the Bill, whereby such activities will not be restricted to registered veterinary practitioners, veterinary nurses will perform acts of veterinary medicine, at times contrary to the public's interest, and without being accountable to the New Board.

The potential for untrained and unqualified veterinary nurses to make an inaccurate diagnosis has significant implications for pet owners and the public at large. Apart from allowing the animal to go without appropriate treatment, numerous zoonoses (diseases transmitted from animals to humans) could go undetected. Common examples of zoonoses in pets that are particularly difficult to detect, yet potentially harmful to humans, include : tapeworms, roundworms (leading to visceral larval migrans) fungal infections such as ringworm, protozoa, and ectoparasites (ticks, fleas and mange mites).

Under the Bill if no "claim" is made to be a registered or qualified veterinary practitioner, no prosecution can be instigated by the New Board. As such the New Board will be impotent to deal with persons claiming to be, for instance, a "qualified American veterinary practitioner", "animal doctor", "animal therapist" or "animal technician", even though such persons will be performing the role of a veterinary practitioner.

- **Para-veterinary Technicians**

Para-veterinary technicians operate from artificial breeding centres and herd improvement co-operatives and are employed to perform artificial insemination of cattle. In the off-season these employees are often involved in the dehorning of heifer replacements, herd testing, and advising on the selection of bulls for the subsequent season's breeding program. They have also become providers of pregnancy testing services.

The AVA recognises that it would not be in the public interest to restrict this type of service to registered veterinary practitioners. However, services which include bulk milk cell testing, individual cow cell testing, and the use of prostaglandins for oestrus synchronisation, place these technicians in a

position where they require access and use of restricted substances (Schedule 4 drugs). In the past these para-veterinary technicians have been able to obtain the required drugs illegally and have on-supplied and invoiced them as "artificial breeding services". Currently this practice is in breach of both the Drugs Poisons and Controlled Substances Act and the Veterinary Surgeons Act. The New Board will have no "oversight" of the activities of artificial breeding technicians.

There is considerable risk associated with the over-supply or mis-use of restricted substances, and the potential for unacceptable drug residues appearing in livestock products destined for human consumption. The inherent problem in the usurpation by para-veterinary technicians of acts of veterinary medicine and veterinary surgery is that it may lead to greater potential for misdiagnosis and mistreatment of disease. The Board, under the existing legislation regulates such activities. However, the Bill confers no power on the Board for the oversight of non-registered persons engaging in veterinary surgery or veterinary medicine. Without any control over the activities of para-veterinary technicians the risk of significant problems will clearly be increased. There is also an increased probability of a sub-standard veterinary service becoming established which will be beyond the monitoring and disciplinary provisions which the New Board will impose upon registered veterinary practitioners through the provisions in the Bill.

- **Non-Veterinary Operators**

Pet grooming staff, pet shop staff, equine dentists and farriers frequently perform acts which could be deemed acts of veterinary medicine. Often these operators require supplies of restricted access drugs (both Schedule 4 and Schedule 8) such as sedatives, tranquillisers, and antibiotics, in order to sedate fractious animals or provide treatment for injury or clinical disease in animals which is acquired while the animals is in their care. The service they provide is not one whereby they hold themselves out to be registered veterinary practitioners or qualified as such. However, in providing services such as sedation or other treatment of

animals they are engaging in veterinary practice. Under the current legislation and Board guidelines restricted substances may be supplied to an owner for use when an animal has to be taken to be groomed. In this instance the drugs are supplied by a registered veterinary surgeon who has to answer to the Board if there is an adverse result arising from supply of restricted substances.

• Summary

The AVA does not wish to restrain any of these persons, ie. equine dentists, veterinary nurses and animal technicians. Under the current legislation most of these activities are performed under the supervision of a registered veterinary surgeon working within Board guidelines and with the approval of the AVA.

The proposed approach set out in the Bill, however, limits the power of the New Board to regulate such activities. It is submitted that without some control mechanisms conferred on the New Board with respect to acts of veterinary medicine or veterinary surgery which these operators perform in effect, the New Board, will have no power to control or monitor their activities. This is not an area where market forces will provide the "best" outcome. The ultimate consumer will often be unable to make an informed judgement on the standard or methods of veterinary practice. The potential for exploitation, mistreatment or misdiagnosis is serious and will be attributable to an unregulated and unsupervised environment.

3.4.2 Deregistered Practitioners Continuing to Practise

The Bill will also fail to regulate the activities of a practitioner who has been prosecuted and deregistered. This person may continue to perform acts of veterinary surgery or medicine as long as he or she does not claim to be registered or qualified - eg. by calling oneself an Animal Health Care Provider. Alternatively, the deregistered practitioner may simply continue to manage or oversee the veterinary practice by employing "other" registered practitioners to work in the business. Un-

der such circumstances the public is unlikely to be aware that management was actually registered or not or that the deregistered "proprietor" may be in a position to interfere unduly with the employee veterinarian.

This problem has been recently observed in relation to mirror provisions relating to registration in the Medical Practice Act 1994 (Vic).³ Under this legislation the Medical Registration Board have encountered similar difficulties with deregistered practitioners. In a recent example a particular psychiatric doctor was deregistered for "evil" acts of sexual interference and harassment and was able to establish himself once deregistered as a "therapist". A member of the Medical Board acknowledged that *"the State Government should tackle the issue of doctors setting up as therapists [or counsellors] because patients could continue to be at risk."*

If Clause 57 of the Bill remains unaltered it will open the possibility for prosecuted and unscrupulous parties to continue to perform acts of veterinary surgery or medicine - this is a very real risk - a fact attested to by similar experience in the medical industry.

3.4.3 Registration: Impact on International Health Evaluations

The export of livestock and livestock products is of great importance to the continued strength of Australia's agricultural industry. Australia enjoys a favourable animal health status mainly due to the physical isolation of the country. It is critical that this favourable health status is maintained through the appropriate use and regulation of veterinary services. These standards are constantly assessed through audits by foreign departments ie. United States Department of Agriculture, Food Safety and Inspection Services, Animal Plant & Health Inspection and the European Union of Veterinary Auditors.

The Office International des Epizootics (the OIE) plays a significant role in the evaluation of animal importation issues. The importance of this role was emphasised at the recent meeting of the General

³ Refer section 62 of the Medical Practice Act 1994 (Vic).

Agreement on Tariffs and Trade (GATT) talks in Montevideo, Uruguay. The OIE in its responsibility for determining the health status of different exporting countries, recently undertook a review of different aspects of international trade and health risks. In its risk assessment, the OIE's published guidelines⁴ acknowledge the importance of veterinary services and established a framework for their assessment. In this context, any favourable evaluation of Australia's "veterinary services" could be undermined if the changes proposed by the Bill are adopted and result in a loss of control over those involved with assessing livestock.

The OIE recognises that there is a need for independence in the exercise of official functions (ie. in a government capacity), and legislative and administrative infrastructure to ensure appropriate regulation and control.⁵ A requirement that all veterinarians be registered goes some way towards ensuring that there is legislative and administrative infrastructures and an independence of function. All registered veterinarians (including Government employed veterinarians) will be subject to the control of an independent regulatory body (the New Board). If the effectiveness of this control is called into question as a result of a relaxation of the rules to enable them to operate outside the regulatory framework, even though they may be subject to an assessment by their employer, this will not auger well for the future assessments of Victorian (and Australian) veterinary services by our trading partners. If Government employed veterinarians are answerable to an external and independent disciplinary body it will help ensure the independent exercise of their official functions. On an international level the importance of registration to the integrity of veterinary services is vital.

As part of the OIE Guidelines, a model questionnaire for the evaluation of national veterinary services is set out quantifying the number of registered veterinarians operating within a country. Under the Bill, if actual registration is no longer a key criteria for the performance of acts of veterinary surgery or medicine, and the number of registered veterinarians falls (which could occur if the vari-

ous steps discussed in this submission occur), there is a good chance that Australia's national veterinary services will be downgraded by the OIE.

3.5 Are Other Regulatory Regimes Able to Cover These Situations?

Are other regulatory regimes likely to overcome the perceived deficiency in Clause 57 of the Bill?

- **The Fair Trading Act and the Trade Practices Act**

We have been advised that the consumer protection provisions incorporated in legislation such as the Federal Trade Practices Act 1974 (the *TPA*) and the Victorian Fair Trading Act 1985 (the *FTA*) would not be able to ensure that the types of situations described above will be regulated as misleading, deceptive behaviour or involve the making of false representations.

In any event relying upon the mechanics of general consumer protection law to regulate veterinary practice is ostensibly inefficient and undesirable. This is particularly so given the intention of the Bill to provide for self-regulation of high professional and ethical standards.

The Department of Fair Trading and the Australian Competition and Consumer Commission in the administration of the *FTA* and *TPA* respectively, seek to promote an ethical and equitable trading environment for both consumers and business. It would be in contravention of the *FTA* (refer sections 11, 12 & 32) or the *TPA* (refer Part V) for persons supplying a service to represent that they have an affiliation with an organisation or association, if they do not. For example, a person could not claim affiliation with the *AVA* or registration with the *New Board* when providing veterinary services, if they were not so affiliated or registered.

It is also likely to be a contravention of the *TPA* or *FTA* for a person supplying a service to misrepresent qualifications. The issue is, however, whether these provisions will adequately capture those scenarios excluded from the application of Clause 57

⁴ "Guidelines for the Evaluation of Veterinary Services" Office International des Epizootics; Scientific and Technical Review 1993, Vol 12, No. 4, pp. 1291-1313

⁵ *ibid* p. 1292

as described above. The general answer is that they will not. In a similar way, these provisions seem to attach to the holding out aspects of registration and qualification rather than the standard of service to be maintained by the industry.

- **Common Law Negligence**

Common law negligence will be an alternative ground for action against non registered veterinary practitioners. According to general principles once a duty can be shown by virtue of the proximity and relationship between the parties an action will lie for the aggrieved party if the damage suffered can be attributed to the failure of the practitioner to meet what the court deems to be the requisite standard of care. The law imposes on a practitioner the duty to exercise reasonable care and skill in the provision of professional advice and treatment: *Rogers v Whitaker* (1992) 175 CLR 479.

Whether the level of care required by a court in this context would be as high as that required by an appropriate accountability system is doubtful. Moreover, this approach is not desirable as it is incumbent upon the aggrieved party to bring the action - the profession and the New Board will have no standing to act.

- **Drugs, Poisons and Controlled Substances Act 1981 (Vic) (the DP&CS Act)**

As noted previously (see 3.2) the current scheme for the regulation of prescribed poisons and other drugs is set out in the DP&CS Act. It provides in s13 that only registered veterinary surgeons (registered under the Existing Act) are authorised to be in "possession" of such substances. The Bill makes provision in the Schedule of Consequential Amendments for a similar restriction to be contained in the DP&CS Act for veterinary practitioners registered under the Bill. There have been a number of situations (some noted in this submission) where non registered persons have obtained access to Schedule 4 or Schedule 8 prescribed drugs. To give another example, rural practitioners will often prescribe certain medications for the farmer to have "on hand" for the treatment of mild ailments

ie: mastitis, lameness etc. Although there exists controls in the DP&CS Act the potential for abuse of these requirements will be exacerbated in the light of a relaxation of constraints on ownership and restrictions on practice.

- **Prevention of Cruelty to Animals Act 1986 (Vic) (the PCA Act)**

The PCA Act was born out of a strong push for the recognition of animal rights. It sets out the types of behaviour which are defined as "cruel" - and exempts veterinary surgeons registered under the Existing Act. Many of the procedures undertaken to diagnose and manage animal health could be classified as "cruel" ie. administering an anaesthetic or performing surgical procedures. In this way non-registered persons who commit acts that would come within this broad description may be liable.

The AVA however submit that this Act can not effectively regulate unregistered veterinary practitioners as it depends on a complaint being brought to the RSPCA and it pursuing the action. This is in addition to the fact that it fails to address our earlier noted concerns about the detection of disease.

In sum, the AVA agrees that these different regulatory regimes combining aspects of consumer protection laws, common law negligence, and specific statutory schemes, will capture some of the alleged unscrupulous behaviour. Despite this the absence of an overriding regulatory regime is likely to damage the reputation, standing and image of the profession where the perception is that the practice of veterinary science is not regulated by an effective regime.

3.6 Making a Simple Change

The critical issue is whether the Victorian regulatory scheme will rely upon non-Board control of deregistered and/or unregistered practitioners through the ad hoc application of consumer protection laws, common law negligence and other statutory schemes or whether amendments should be made to the Bill to deal with the deficiency?

The AVA believes the absence of a restriction on practice is a glaring omission in an Act establishing a system of registration. It may be argued by some that to restrict practice by requiring registration is anti-competitive. The Bill however makes considerable allowance to overseas and other practitioners by providing for two classes of registration. Clause 6 provides for "General Registration" along the same lines as current registration requirements. Clause 7 provides for "Specific Registration" permitting those not properly qualified to obtain some form of registration. These specific forms of registration involve the New Board, as the governing regulator, in determining the type of practitioner permitted to obtain such registration. It would seem unnecessary to draw such differences unless there was some restriction on practice.

To remove any reference to registration (and thus some form of disciplined training and/or education) will be to put the public at risk. Once a system of registration is endorsed it is necessary to ensure that the practice of the science should be regulated in some fashion.

In the context of Victoria's continuing review of health and medical practitioner legislation it is observed that Parliament has been prepared to endorse restrictions on practice in other areas. The review of registration Acts has resulted in the recent enactment of the Optometrists Registration Act 1996 (Vic). This Act demonstrates a degree of uniformity being adopted in health practitioner regulatory Acts - a formula also followed by the Bill. This Act however, contains clear restrictions upon practice by optometrists if not registered.

Section 60 of the Optometrist Registration Act is headed "Unregistered Persons". It states that "a person must not practice optometry unless the person is registered under this Act." - invoking a penalty of 100 units.

This provision ensures that both unregistered and deregistered individuals are prohibited from practising any aspect of optometry. This type of pro-

vision captures the essence of the registration process - to deny the unqualified or unscrupulous. A similar provision should be included in the Bill. The fact that we are dealing with animals rather than humans should not be seen as creating a real difference.

It is the AVA's recommendation that Clause 57 be changed to read:

"Clause 57

- (1) **A person must not engage in veterinary practice unless the person is registered under this Act.**
- (2) A person who is not a registered veterinary practitioner must not:
 - (a) take or use the title of registered veterinary practitioner or any other title calculated to induce a belief that the person is registered under this Act; or
 - (b) claim to be registered under this Act or hold himself or herself out as being registered under this Act; or
 - (c) claim to be qualified as a veterinary practitioner."

The legislation should further provide that the meaning of veterinary surgery or medicine is to be determined by the New Board as the governing regulator on a case by case analysis.

In this way the AVA suggests that the definition of "veterinary practice" be clarified. It recommends the following prescription:

"veterinary practice" means the practice of veterinary surgery and veterinary medicine which will be determined by the Board taking into consideration community attitudes and standards in order to reflect current developments in knowledge and technology as incorporated in the undergraduate and

postgraduate curriculum of schools of veterinary science as accredited from time to time by the Australasian Veterinary Boards Conference⁶.

4. ownership deregulation

The second major concern of the AVA is the proposal to deregulate practice ownership. In the context of competition review, ownership restrictions have been targeted as an area for reform. The Bill provides no restriction upon the ownership of veterinary practices, this is in direct contrast to the Existing Act. Mr Gude stated in the second reading speech that:

"the Bill removes the current restrictions on the ownership of veterinary practices. It is recognised that the Board will have no power to act directly against an owner who is not a registered veterinary practitioner in the event that complaints are generated about the upkeep or the standard of facilities or administration of the practice."

This statement clearly demonstrates the Government's intention to remove barriers to ownership. It will mean that the unregistered or untrained proprietor will not be regulated by the Board - only registered co-owners, partners or employees will be the subject of control.

The AVA recognises the importance of national competition policy and its drive towards the deregulation of ownership, and that it is pervading all spheres of industry practice. Essentially it involves significant public interest concerns. The general tenor of these concerns is that while business must aim to maximise profits, the Government must aim to maximise social or public benefit. In the event that restrictions on ownership are to be removed, it is necessary to ensure that some control will be able to be exercised over the proprietors of veterinary practices who are not registered practitioners.

4.1 Public interest issues in deregulating ownership

In this context the opening up of corporate or retail ownership of veterinary clinics may result in a fall in the high standard of veterinary health care - a fact which could have substantial negative implications. Furthermore, given the significance of health and safety issues identified at paragraph 2.3, the problems documented below offer further concern on a public interest level.

The significance of veterinary services, and its impact on public safety issues was emphasised by Mr Gude in the Bill's second reading speech. He stated that: *"Veterinarians in Government service and private practice provide the basis for control of diseases of animals which impinge on public health, interstate and international trade in livestock and livestock products and the general wellbeing of companion, competition and recreational animals."*

The rationale for ownership restrictions should be reviewed in the light of such public interest issues.

4.2 Access to Pharmaceuticals and Medical Equipment

Veterinary Practitioners play a key role as a custodian and point of distribution of drugs and medicines. Veterinarians are responsible for storage, dispensation and use of scheduled medicines and drugs both (schedule 4 and schedule 8) as prescribed by the DP&CS Act. The AVA has already adverted to this issue but the implications of potential abuse are more acute here.

The principal concern is whether non-veterinary practitioners should have proprietorial responsibility for the distribution and appropriate use of scheduled medicines. These scheduled medicines have been recognised by the community through the schedule as:

- (a) not being items of normal commerce; and
- (b) items that have to be provided to the consumer in a particular manner to safeguard

⁶ The Veterinary Boards Conference (the AVBC) organises accreditation visits to the various veterinary schools in Australasia on a rotational basis.

the community health and encourage improved animal health outcomes.

It is also important to recognise that the method of distribution and level of responsibility demanded by the community through the schedules involves a different cost structure and sales approach from those of general retail distribution. "Stock it high and let it fly" the credo of mass merchandisers should not be able to be applied to scheduled medications. This is a market in which thrusting salesmanship is out of place. The public should be buying more medications only when it is truly needed. This is a particular problem in an industry of this kind, where there is substantial information asymmetry. The fact that we are dealing with animals rather than humans should be of little or no consequence.

This problem will be exaggerated in the context of rural veterinary practices as compared to their city counterparts. Rural veterinary practitioners rarely see the individual animal patient before prescribing appropriate drug therapy. Such practitioners are likely to see only 10% of the animals they effectively treat. In a rural practice once a client relationship is established, farmers often have medicines "on hand" to promptly treat cases of lameness, mastitis and metritis that both the farmer and veterinarian know will occur in the ensuing months. Quite often, *whole herd* therapy is undertaken where the entire herd of animals is treated on the basis of symptoms displayed in a sample being examined. This will clearly raise the scope for abuses of the DP&CS Act, and impinges on issues of public health and safety.

Unfortunately, ownership of veterinary practices by non-registered practitioners or corporate parties will only facilitate the easy supply of restricted substances such as prostaglandins and antibiotics to non-qualified technicians and livestock operators (farmers etc.). For instance the AVA have observed problems associated with the oversupply and use of antibiotics and the detection of antibiotic residues in our food chain. Apart from the serious problems associated with antibiotic resistance created by overuse of antibiotics, the possible rejection of individual shipments and in some cases

the complete ban on Australian beef or dairy exports by our trading partners is ever present. The risk to the reputation of Australia's export of livestock and livestock products could be significant.

In a similar vein, practitioners have access to X-ray equipment that can only be used and operated by a licence holder under the Health (Radiation Safety) Regulations 1984 of the current National Health Act 1953. The deregulation of ownership may give non-veterinarian owners unchecked access to such medical equipment - contrary to the interests of public safety and animal health care.

4.2.1 Accountability

(i) Congruence of Ownership and Operation

Veterinary-only ownership of practices not only ensures the person directing the business has been inculcated with an understanding of veterinary science, and professional ethics during training, it also ensures that the owners of the business are directly accountable through their own registration for any unprofessional conduct of the business.

The AVA appreciates this congruence of ownership and operation provided for under the Existing Act. This congruence facilitates effective and efficient monitoring and enforcement of the professional standards exacted by the self regulating bodies.

The ability of the Board and professional groups such as the AVA, to identify and hold accountable veterinary practitioners, and owners of veterinary practices suspected of unscrupulous actions, is critical. Registered veterinary proprietors have a professional and personal interest in ensuring that ethical and efficient practices are adhered to.

This system should ensure that owners and practitioners, who contravene the law or the standards as set by the New Board, are identified immediately and held accountable for

their actions and are dealt with by the appropriate authority. If they transgress they can be stripped of their right to own a veterinary practice in the future - a significant deterrent mechanism given the lengthy and highly specialised training endured by such practitioners. The ultimate protection for the consumer lies in the professional liability of the veterinary practitioner who can lose his or her livelihood if convicted of unethical behaviour.

In an open system a non-veterinarian owner could hide behind corporate ownership and not suffer any financial penalty if the registered practitioner is deregistered. The solution is to hire a replacement practitioner. The AVA is of the view that unlike the veterinary practitioner who owns the practice, and thus shares accountability with any other practitioner who may work in the clinic, a company owner of a clinic does not stand to lose registration with its attendant losses. It is feared that the absence of a similar regime of accountability will lead to a considerable compromise of professional standards and public safety.

(ii) Exploitation of Employee Veterinary Practitioners

The AVA further believes that deregulation may lead to the exploitation of qualified and registered veterinary practitioners by non-veterinary owners. This will be of particular concern in the context of drug control and health care. Such a development would prove hazardous and socially undesirable. Existing ownership restrictions go a long way in avoiding potential conflict between ethical considerations and the profit motive.

If non-veterinary owners are allowed to run a veterinary business they are more likely to bring pressure or influence on the employed and registered veterinarian to ignore or give less weight to professional standards in certain circumstances. In such a case the employee would either have to resign, be

sacked or continue to work "illegally" and face possible investigation and deregistration by the New Board. As noted earlier, once one practitioner is deregistered a new practitioner can be appointed. This will fly in the face of the entire registration process.

Whilst corporate owners will want to employ veterinary practitioners as shop employees, they are not unlikely to manage their time and job role for profit and throughput maximisation - sacrificing counselling time and follow up procedures.

In a large animal, dairy or beef cattle veterinary practice pressure could be applied to the employed registered veterinarian by such an owner to "move a certain volume" of pharmaceuticals through the practice for purely commercial rather than professional reasons. Deregulation offers scope for such unscrupulous behaviour and may lead to undue pressure being exerted. The ultimate result is the compromising of ethical standards by registered "employee" practitioners to the detriment of public health and safety.

(iii) Absence of Control over Non-registered Owners

The deregulation of ownership means that the New Board would have no control over the non-registered owner to provide suitable standards for the premises or methods of operation of the business.

Furthermore, under an open system of individual and corporate ownership, the principles of competitive neutrality are not being strictly observed. Individual veterinary practitioners who are registered will be subject to the full regime of the Bill including the disciplinary measures, which will not apply to non-veterinarian corporate owners.

Veterinary practitioners present a classic example of the success of "self regulation". Competition policy is concerned in a major part in reducing regulation in favour of "self

regulation". If the current ownership restrictions are removed what measure will be introduced to ensure that non-registered owners will be subject to the regulatory regime of the legislation? In its submission of December 1996 to the Health Review of the Medical and Health Practitioner Registration Acts (Qld), the Australian Competition and Consumer Commission acknowledged that in removing ownership restrictions "*companies would need to be made liable for offences of employee professionals*".

Whilst this would require the introduction of new regulations (which could prove difficult, time consuming and costly) the AVA submits that such an alternative regime will need to be put in place at the same time as the Bill comes into effect if its arguments on ownership are rejected. To ignore this would be to put the registered profession at a serious disadvantage; perhaps more importantly it would expose the public to possible dangers which will not be the subject of the New Board's jurisdiction.

4.2.2 Commercial pressures

The freeing-up of practice ownership will bring commercial pressures to bear upon the practise of veterinary science within Victoria. The AVA submits that the removal of ownership restrictions may cause the rationalisation of veterinarian practices, with the consequence that particular sections of the community could face reduced levels of service.

In this way access to rural health care may become an issue where corporate ownership focuses purely on "economic" location. The importance of veterinary services in rural and outback areas is critical to the health of our agricultural industry (the backbone of the Australian economy). This may be jeopardised with a shift in focus from health care to profit maximisation.

As previously noted, commercial pressure may be imposed by corporate owners in the merchandising and dispensing of pharmaceutical products. Similarly, the time spent in treatment, diagnosis,

and follow up procedures may be constrained by attempts to maximise patient turnover.

To conclude, it is the view of the AVA that the relaxation of ownership restrictions will escalate the commercial pressures on veterinary practice. It is contrary to the public interest to accept a reduction in the levels of professional standards which will inevitably result from such a relaxation.

It is submitted that the ownership restrictions as they currently operate should continue with the new Bill, to ensure the highest professional standards are maintained and to avoid the difficulties associated with creating and imposing a second system of regulation for non-practising owners.

4.3 Amendment to the Bill

The AVA submits that in the absence of effective control mechanisms for the regulation of non-registered proprietors, the removal of ownership restrictions will prove problematic. As documented in 3.5 consumer protection law (TPA or FTA), common law negligence and other specific statutory schemes are not likely to prove effective in regulating non-registered persons.

The AVA believes that unless alternative systems are in place for the regulation of practice owners, the scope for abuse and a reduction in professional and ethical standards is high. In the light of the problems outlined above, the AVA has real fears that the deregulation initiative supported by the Bill will prove very costly to the community.

In these circumstances the AVA recommends that it is in the public's best interest to have restrictions on ownership maintained.

In the event that such ownership restrictions are removed, the AVA submit that alternative mechanisms should be inserted into the Bill to provide for the control and regulation of non-registered practice owners.

One option would be to include a provision that would enable the New Board to prosecute non-registered persons where it can be shown that

such persons have been "involved" in the relevant contravention, by aiding and/or abetting activities which if carried out by registered practitioners acting alone would be subject to regulation. The potential for exploitation of employee veterinarians by non-registered owners will be reduced where such owners can be prosecuted for aiding and/or abetting a contravention in appropriate circumstances.

5. a further issue - mutual recognition

The Victorian review of veterinary practice regulation is at the forefront of other reviews occurring in other States. With the continued push towards mutual recognition of all professions, and attempts to achieve uniformity of regulation on a national level, it is important that Victoria as the "leader" in this area is not seen to be setting the standards of regulation at too low a level.

This factor, in addition to arguments relating to public interest and public health and safety, makes it important to ensure that the Bill does not establish a system of regulation that is, or is seen to be, inadequate.

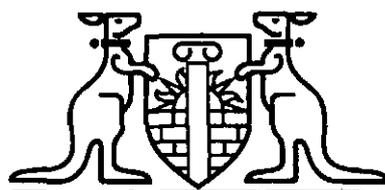
6. conclusion

The Bill in its current form will permit non-registered persons to perform acts of veterinary surgery or medicine or own veterinary practices without being subject to oversight by the New Board. In light of significant public interest issues and practical and administrative difficulties as detailed in this submission there is clear need for a change in the proposed approach. It is the AVA's submission that amendment to the tabled Bill in the manner suggested in this document is imperative.

ARCHITECTS ACTS IN AUSTRALIA

A Position Paper on the Registration and Regulation of Architects

October 1997



**THE ROYAL AUSTRALIAN
INSTITUTE OF ARCHITECTS**

ACN 000 023 012

foreword

Following the Uruguay Agreement on Trade in Services, the World Trade Organisation proposes very soon, probably in 1998, to commence the negotiations in respect to trade in architectural services. It will be in the interests of Australia to move quickly to a nationally uniform statutory backed registration and regulation system for the architectural profession that is compatible with the systems existing, or being developed, in the countries that make up our trading partners.

Whilst the current Architects Acts in Australia have many similarities, they are all "titles" Acts or certification systems which reserve the title "architect" and its derivatives. It would appear that many other countries either have or are moving to a system of "practice" regulation under which only individuals and groups of individuals who meet specific legislated criteria may perform the services of the profession. These systems acknowledge that the most effective means of protecting the public interest, in respect to the quality and performance of the constructed environment, requires legislation to control the practice of architecture, rather than merely limiting the use of the title.

The RAIA believes that the proposed reviews of all existing State and Territory Architects Acts resulting from the Council of Australian Governments (COAG) Competition Principles Agreement should be conducted as a single national review. Such a review should lead to either a National Architects Act or uniform legislation in each of the States and Territories.

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1. introduction

Architects are the most highly qualified designers and specifiers of the constructed environment which makes up the public and private domains of the Australian community.

Architects Acts exist in the eight State and Territory jurisdictions and fall into the category of "Titles" occupational legislation. Under this form of legislation the "title" rather than the "practice" of the occupation is controlled by the legislation. This serves to identify for the public a group of providers who possess architectural qualification, experience and competence whilst also providing arrangements to maintain standards of practice. This aspect of the legislation becomes increasingly important as the science, technology and management of the construction industry advance.

All State and Territory governments have identified Architects Acts for review under the Council of Australian Governments agreement on Competition Policy.

2. executive summary

general

Ideally Australia should have national legislation for the Registration and Regulation of architects that complies with world's best practice so that Australian architects can compete in world markets. If national legislation cannot be achieved then State Architects Acts should be retained, harmonised and strengthened to cover the practice of architecture.

the objective of architects acts

The objectives of Architects Acts should be:

1. To ensure that architectural services are of a standard that will protect and enhance the public's economic, social, cultural and environmental interests.
2. To ensure that architectural services are provided by and under the control of architects appropriately qualified by virtue of education, training and experience and who have the necessary competence and resources.

Architects Acts should control the practice of architecture and not be limited to the protection of the title.

consumer protection

Existing general consumer protection legislation such as Fair Trading and Trade Practices Act do not adequately protect the interests of consumers of architectural services, let alone the broader public interest issues related to the quality of the constructed environment.

the market and restrictions on competition arising from architects acts

Many alternative 'architectural' service providers lack the training, skill and expertise of architects. The cost to the community of inexpert advice in construction far exceeds the cost of the statutory arrangements which set and maintain standards for architectural services.

The Trade Practice Commission in the Study of the Architectural Profession, found competition was not inhibited by the regulatory arrangements for the architecture profession".

Architects Acts appear to be fulfilling the purpose of publicly identifying those qualified to provide architectural services.

It would be extremely costly for consumers to research and evaluate the competing claims of architectural service providers if Architects Acts were abandoned.

Consumer education is extremely difficult to achieve because consumers are infrequently in the market for architectural services.

Corporate marketing of architectural services is costly and ineffective because of the nature of the market.

The provision of architectural services should be under the effective control of architects.

The RAlA does not support the retention of the age restriction for registration in some Architects Acts.

The public expectation is that architects will adopt and maintain higher moral and ethical standards than those applying in commercial markets.

The low level of formal complaints against architects is an indication of the efficacy of the administration of Architects Acts.

The RAlA is a voluntary organisation. It does not provide an alternative system of publicly identifying all architects.

As a group, architects are more competent and provide significantly higher standards of service than unqualified providers.

The market for the provision of architectural services is highly competitive.

The public and Australia's trading partners have greater faith in a statutory system of registration, rather than a system based on membership of a voluntary organisation.

the international context

22% of Australian architects' fees income is derived from overseas activity.

The State legislative review should take international trade issues into account. Statutory architects registration systems are used by most nations with whom we trade and compete. A repeal of Architects Acts would place Australian architects at a significant disadvantage in world markets.

The World Trade Organisation is about to commence negotiations to establish multi and bi-lateral agreements in trade in architectural services.

boards of architects - administration of architects acts

The requirement for architects to have two year's experience and pass a practice examination, as well as having the undergraduate degree, provides assurance that practitioners not only possess knowledge and skill, but also have practice experience.

The RAlA actively promotes a continuing professional development program and is not aware of any market failure associated with that program.

The RAlA supports the role of the Boards of Architects in course accreditation.

As most architectural service providers are organisations, the RAIA believes the registration system should cover organisations.

A database linking names of architects to organisations would not operate as effectively for the public as a system that registers organisations.

The low level or socially undesirable outcomes resulting from the behaviour of architects can be attributed to the Architects Acts and the work of the Boards.

The RAIA code of conduct covers its members. A mandatory code under the Act would cover all architects and provide greater public protection.

Professional indemnity insurance is a palliative. Greater public protection is achieved by the Architects Act setting and raising standards of practice.

Nevertheless, the RAIA supports the concept of compulsory professional indemnity insurance for architectural practitioners.

The RAIA believes penalties under the current Acts are inadequate.

The RAIA supports the Board having greater authority to deal with misrepresentation in respect to the use of the title 'architect' and with the provision of architectural services.

Specialised tribunals are required to hear cases against architects. However, the RAIA believes these tribunals should have lay representation.

The RAIA supports consumer representation on the Board of Architects.

the regulation of professionals - professional standards legislation

The Professional Standards Acts are not viable substitutes for the Architects Acts.

3. the objectives of architects acts

Discussion point 1

The terms of reference for COAG Competition Policy Reviews require Governments to clarify the objectives of the legislation that is under review.

What are or should be the objectives of the Architects Act?

The objectives of the Architects Act should be:

- 1 To ensure that architectural services are of a standard that will protect and enhance the public's economic, social, cultural and environmental interests.
- 2 To ensure that architectural services are provided by and under the control of architects appropriately qualified by virtue of education, training and experience and who have the necessary competency and resources.

The Architects Act should control the practice of architecture and not be limited simply to the protection of the title.

4. consumer protection

The central purpose of Architects Acts is to provide protection for the consumer and the public. They are not designed to provide protection to the architect.

It is for this reason that Architects Acts are not in conflict with consumer protection such as the Fair Trading Acts and the Trade Practices Act 1994, but rather the three phases of legislation serve to provide different types of consumer protection.

In some States the Fair Trading Act states that it "... does not allow persons supplying a service to represent that they have an affiliation with an organisation or Association, if they do not." Thus a person could not claim affiliation with the Royal Australian Institute of Architects (RAIA) when providing architectural services if they are not a member. However the issue is not one of just controlling membership of an organisation, (as many registered architects are not members of the RAIA) but rather one of guaranteeing the public is employing an individual or practice who holds themselves to have a higher level of expertise in the design, documentation and contract administration of buildings and the provision of ancillary services which bring together issues of economics, environmental imperatives and social responsibility. The public understands the level of expertise provided by registered architects. To permit others to hold that they have such an expertise without the associated education and training would expose the public to unexpected and unwanted risks.

This is the protection provided by Architects Acts.

The architectural profession is seeking to differentiate between those qualified to provide architectural services, and those who are not, so that the public clearly understands the difference.

Architects and people with building technology qualifications are an integral part of the building industry, contributing the total delivery of architectural services. However, the control of the scope and quality of those services should be in the hands

of architects. Rapid Advances in building science and technology combined with a move to performance rather than prescriptive building regulation, requires that the education and standards of practice of architects are monitored and controlled by an independent authority. The Architects Acts serve this purpose.

If the Boards of Architects are abolished and the RAIA assumes the role of the regulating body, there would be considerable disadvantages for the community.

- The Architects through the RAIA will be effectively self regulating along the same lines as the advertising industry and the Press Council. This will lead to community perceptions of ineffectual dealing with complaints and difficult issues or at some stage in the future an actual inability and subsequent cost to the community.
- There is a potential conflict of interest with the RAIA being the regulating body and also representing the interest of its members.
- The public will be less inclined to complain to a professional body than to an independent board.
- Non-industry representation is important to maintain public confidence in the formulation and regulation of standards.
- The public does not need an understanding of professional standards in order to gain a benefit from them. Buildings are in the public domain and the higher the level of skill and training that is employed in the process of building design, the greater the benefit to the community.
- The quality of building design is much harder to define than, for instance, the quality of construction. Given the potential lifespan of buildings, the only feasible way of protecting the public interest in relation to architectural services is to clearly define and regulate the skills and training of those who provide the services.

- Public perception of industry self-regulation will erode differentiation of "architects" and "architectural services" from the rest of the industry. This will reduce the incentive to the profession to maintain high levels of training and skill, thus resulting in a long term reduction of industry standards.

5. the market and restrictions on competition arising from architects acts

The role of the architect is being challenged by a range of alternate service providers claiming to possess the skills of an architect in managing construction projects, administering contracts etc. In many cases these providers lack the qualifications to perform the services and, as no statutory system prevents anyone claiming the right to provide architectural services, the principles of caveat emptor apply. The cost to the customer and the public of this arrangement far exceeds the cost of statutory arrangements that provide for architectural services to be provided by people with architectural qualifications.

The 1992 Trade Practices Commission (TPC) study of the Architectural Profession found that "the market for building design services was competitive and not inhibited by the regulatory arrangements for the architecture profession".

It has been suggested that current restrictions on the use of the word architect and its derivatives remove "the ordinary English words 'architect' and 'architectural' from general use". This is a misconception as the restriction relates only to those words when they are used in connection with the provision of architectural services. There is, therefore, no restriction on using the word 'architect' or its derivatives in describing things other than the delivery of architectural services. For example, one can refer to the architect of a political idea, architectural door furniture, architectural windows, etc. The RAIA finds this arrangement to be understood and acceptable to the public.

Discussion Point 2

Given the existence of the consumer protection legislation, would problems still exist in the absence of registration of architects?

Is there an information failure in the market that is not already being adequately addressed by the market and/or existing Government regulation? If so, is a legislative restriction on the use of the terms 'architect' and 'architectural' the best way to address such a failure?

Existing consumer protection legislation is, by necessity, broad in its nature, and provides no panacea for the particular issues that arise in the construction industry and the delivery of architectural services. Consequently, the need remains for specific legislation dealing with the industry and architectural services.

Legislation and regulation related to construction sets minimum standards to protect public health and safety. It has been generally prescriptive in nature. Recently, a strong trend has developed towards these regulations becoming performance based and, at the same time, governments are embracing the need for sustainable development and energy conservation.

To respond to the changing public expectations expressed in the new regulatory regime and emerging government policies, the knowledge base, training and skill of people who design buildings will need constant development and improvement. The most efficient way for the Government to ensure this result is to reinforce and develop the Architects Act so that, not only the title of architect is regulated but also, more importantly, the practice of architecture.

An essential requirement for successful operation of free markets is that consumers are sufficiently well informed to enable them to transact successfully with service providers. As most consumers of architectural services only enter that market

place once or twice in their life, it is doubtful that a free market for architectural services relying on general consumer protection legislation will ever be successful. The RAIA believes there will be continuing need to protect the interests of consumers and the public by legislation in relation to the provision of architectural services.

Discussion point 3

Are there any sections of the population that may suffer significant disadvantage if they are unable to distinguish between an architect and another provider of building design services?

All but the small proportion of regular consumers of architectural services would be disadvantaged if they were unable to distinguish an architect from other building designers, because architects are the only building designers who are formally educated and qualified in building design. (Architects receive about 3400 hours of training in design during their education, which compares, for example, with less than 300 hours in TAFE diploma or certificate courses.) Architects are also trained in the preparation and administration of building contracts to ensure proper performance by the contractor, thus protecting the consumer's interests.

The time and cost to the consumer in researching, evaluating and identifying the differences between the qualifications and categories of the various providers of building design services would be significant. The cost to the consumer of selecting a service provider who is not suitably qualified to undertake a complex construction project could be very significant over the construction and life cycle of the project.

Discussion point 4

Poor understanding of architectural services by some segments of the market may be due to lack of promotion of the certified title and the standard of qualifications it represents.

This point also relates to consumer education and information. Consumers become informed and able to transact successfully in a particular market place if they deal regularly in that market place. As explained earlier, there are relatively few regular consumers of architectural services. The experience of the RAIA is that the corporate marketing of architectural services is prohibitively expensive because the market is small, diverse, widely spread and extremely difficult to identify. The broad media marketing campaign that would be necessary to reach such a market and create lasting consumer knowledge of architectural services is well beyond the current financial resources of the RAIA.

A further consideration is that the Institute is a learned society whose membership is made up of students, academics, public servants, employees and principals in private practice. To devote significant resource to the interests of only one sector of the membership would not be in accordance with the principles or the objectives of the Institute.

Discussion point 5

Are there any sections of the population that will suffer significant disadvantage if they have difficulty determining whether a firm is capable of providing architectural services?

Only a small number of consumers are regular users of architectural services. Most consumers have considerable difficulty in understanding the design process, let alone establishing a clear understanding of the extent and nature of architectural services. These consumers are at a considerable disadvantage in evaluating the competing claims of architects and those of unqualified providers claiming to provide architectural services. The current legislative arrangements at least provide a level of assurance that architects are qualified and controlled. As mentioned elsewhere, the sophistication and complexity of the construction industry today is resulting in a world wide move beyond "title" registration, to "practice" registration, as this produces better public protection.

Discussion point 6

A large number of architects appear to practise through small firms controlled by architects. For example, it is estimated that 80% of architectural practices are less than 4 people.

Does the current permitted use of the title 'architect' by organisations cause any restrictions on the way architects would prefer to practise?

The provision of architectural services to the public should be under the effective control of architects.

This is assured in the case of sole practitioner architects and architectural partnerships and should be so in the case of corporations.

It has been suggested that it is sufficient for corporations to provide services under the supervision of an architect even though the control of the corporation is in the hands of non-qualified directors. This could, and probably would, result in the employee architects being confronted with conflicts of interest that are not in the public interest.

There is no evidence to suggest that the RAIA policy on the control of architectural practices is unacceptable to the architectural profession.

Discussion point 7

Is there any value in retaining an age restriction on entry to the architectural profession?

There is no value in retaining an age restriction on entry to the architectural profession if all other entry standards related to training, experience and competency are retained.

Discussion point 8

It has been suggested that the current subjective assessment of 'good character' required before registration as an architect, has the potential to include issues of behaviour unrelated to future professional practice.

Is there any evidence of refusal to register on behavioural grounds unrelated to professional practice?

The public expects that architects, like all professional advisers, will maintain high ethical standards.

This is an essential requirement in, for example, the "quasi judicial" role the architect performs in administering a building contract. It is, therefore, in the public interest that architects possess, not only the qualification and competency to provide architectural services, but that they understand, accept and adopt moral and ethical principles and standards that are higher than those applying in the commercial market. A strengthened Architects Act would reinforce the need to meet the standards in a commercial environment where adherence to such standards, despite the law, is sometimes questionable. The RAIA Code of Conduct covers RAIA members but not all architects are members of the Institute.

Discussion point 9

The receipt of relatively few formal complaints to Registration Boards suggests that there is not a market failure associated with the behaviour of architects.

Is there any other evidence of behaviour by architects which could be categorised as 'market failure', and which could warrant some form of government intervention?

The receipt of few formal complaints probably indicates the administration of the Architects Act by

the Board and the efforts of the RAIA to maintain standards in the profession are successful.

It does not follow that a low level of formal complaint under the current arrangements indicates these arrangements are not necessary.

The RAIA receives numerous complaints from the public about 'architects'. However, on many occasions it is discovered that the service provider is not an architect or that a misunderstanding has occurred which, following advice on the matter, results in the complaint not proceeding.

Discussion point 10

Given that there is already a professional body which actively seeks to increase standards within the profession, what are the additional consumer benefits of statutory registration, and do these benefits exceed the costs of restricting competition in this way?

Is registration of architects the best way of ensuring public confidence in architectural services?

The RAIA is a voluntary organisation in which members agree to maintain and raise standards. It is arguable that informed and discerning consumers may be able to identify qualified architectural service providers by seeking out RAIA members. However, the purpose of the Architects Act is to provide a system of publicly identifying all those who are appropriately qualified to provide architectural services and to ensure that standards of service are maintained.

There is anecdotal evidence of failures involving both qualified and non-qualified providers, but no reliable conclusions can be drawn from this evidence. The general observation, however, can be made that services provided by people who are educated, qualified and experienced in their profession will usually be competent and of a significantly higher standard than services provided by people not so qualified.

There is no evidence that the current system of registration produces a significant cost to the community by way of inflated fees and charges. In fact, the 1992 Trade Practices Commission Study of the Architectural Profession found the market for architectural services was highly price competitive and this situation has not changed. The cost of administering the Act is borne by the profession, not the public. The relatively low cost of registration has no impact on the fees charged for architectural services.

The public have greater faith in a government registration system than they do in a system based on membership of a private organisation. Also, as referred to elsewhere, this is a critically important consideration in respect to the standing of the profession in other countries and other jurisdictions.

6. the international context

Australia is a major exporter of architectural services (22% of the gross fees of Australian architects is derived from the delivery of services off-shore). The "pull-through" effect into the Australian contracting, materials manufacturing and construction industry is significant. There is a danger that a State by State legislative review process may fail to appreciate the significance that the current system of registration for Australian architects has in foreign markets.

Statute backed registration of architects exists in nearly all of the countries that make up our trading partners and also, importantly, in those countries with whom we compete. For example, the EEC countries, the United States, Canada and New Zealand.

The credentials and standard of Australian architects is currently accepted internationally in large part because we have a registration system which is established under an Act of Parliament and administered by a statutory agency independent of the profession.

The repeal of an Architects Act would unquestionably lessen the standing of people calling themselves architects from that particular State or Territory and, because of Mutual Recognition legislation, lessen the standing of Australian architects in the international market place.

By way of an example, China is a rapidly developing market for Australian architects. The major competition comes from the United States and the UK. China is in the process of introducing architectural "practice" legislation similar to the US system. To be on the same footing as US architects seeking work in China, it is essential that our occupational legislation and its administration is considered by the Chinese to be at least equal to the US system.

This issue will become even more compelling in 1998 when, as mentioned in the Foreword, the World Trade Organisation commences the government to government negotiations on trade in architectural services.

7. boards of architects - administration of architects acts

7.1 Registration

Discussion point 11

What are the consumer benefits and costs of requiring all architects to have a minimum of two years experience and pass a practical examination in addition to obtaining a degree?

The requirement that all architects have a minimum of two years post-graduate experience and pass a practical examination, ensures that all registered architects possess a minimum level of practical experience in addition to possessing an academic qualification. It is also mandatory that this experience be gained under the supervision of a registered architect.

Consumers benefit from the certainty that all persons registered as architects possess a minimum level of experience of the practise of architecture which has been tested and verified by examination. This benefit is achieved through registration fees paid to the Architects Board by the architectural profession and through the salaries and related on-costs paid to recent graduates by their employers.

7.2 Compulsory continuing professional development

Discussion point 12

Is there any evidence that the current arrangements for continuing professional development of architects through the RAIA are inadequate and have resulted in market failure?

The RAIA strongly supports the principle of continuing professional development and has established a comprehensive program for its members. Members are strongly encouraged to participate in this program however participation is not manda-

tory. It has been found that members located in remote areas of Australia and overseas have not been able to satisfy the requirements of the program in a meaningful way.

The RAIA is not aware of any market failure arising through the current program. The program has been introduced in response to the increasing rate of change in the design and construction industries as a means of avoiding market failure.

7.3 Accreditation of architecture courses

Discussion point 13

Is there any evidence to support the role for Boards of Architects in accrediting architecture degree courses.

The RAIA supports the inclusion in Architects Acts of specific provisions for participation in the monitoring and accreditation by the Board of the architecture degree courses. This regularises a system which contributes to an increase in national uniformity of architectural educational standards and qualifications. It provides the public benefit of setting minimum standards for the profession and is extremely important in establishing the credentials of Australian architects in overseas markets.

7.4 Registration of architectural practices

Discussion point 14

What additional consumer benefits might derive from a formal registration process for organisations as well as individuals, and would those benefits justify the additional costs to the community?

Would a database linking the names of architects to the organisations through which they practise provide sufficient information to enable consumers to identify organisations able to provide architectural services?

The RAIA supports a formal registration process for organisations as well as individuals. As most architects operate through a corporate structure, it is logical that the provisions of the Act should be made applicable to these arrangements.

Consumers would benefit from the knowledge that they were obtaining services from a firm or corporation which was bound to comply with the provisions of the Act. In addition, this would reduce the possibility of confusion resulting from the employment of architects for partial architectural services by organisations such as builders or developers. In these instances, a conflict between the commercial interests of the employer organisation and the interests of the consumer may exist where an employee architect is not in a position to act independently in the interests of the consumer.

A database linking the names of architects with the organisations through which they practise would not provide sufficient information to enable consumers to identify organisations able to provide architectural services for the reasons already mentioned in response to the previous question concerning formal registration or organisations.

7.5 Professional behaviour - code of professional conduct

Discussion point 15

Is there evidence of socially undesirable outcomes as a result of the behaviour of architects?

Does the RAIA's code of conduct cover a sufficient proportion of the profession to effectively maintain professional standards of behaviour?

Would a mandatory code provide a significant level of additional benefits for consumers?

Would professional indemnity insurance be more effective than a compulsory code of conduct for protecting consumers against any instances of incompetence, recklessness or negligence by architects?

There is a very low incidence of socially undesirable outcomes as a result of the behaviour of architects. This may be attributed, at least in part, to the existence of the Architects Act and the activities of the Architects Board in administering the provisions of the Act.

More than two-thirds of registered architects are members of the RAIA, which entails an undertaking to abide by the RAIA's code of conduct. While this represents significant majority of the profession, membership of the RAIA is not mandatory and there is no guarantee to consumers that all architects will maintain the standards required by the RAIA's code of conduct.

The RAIA supported the inclusion of a mandatory code of conduct in the regulations under the Act, in line with the recommendations of the Legislative Guidelines for Architects Acts in Australia, November 1992, published by the Architects Accreditation Council of Australia.

A mandatory code of conduct would provide a significant level of additional benefits for consumers by clearly establishing a minimum standard of conduct for all architects.

The RAIA supports both a compulsory code of conduct and maintenance of professional indemnity insurance to cover the activities of all architects, as complementary measures in provision of consumer protection.

A compulsory code of conduct, backed by appropriate authority to monitor and police, protects consumers by acting as a preventative measure against incompetent, reckless or negligent architects.

Professional indemnity insurance provides a necessary consumer protection safety net by covering the costs incurred by consumers as a result of the activities of incompetent, reckless or negligent architects.

While it can be argued that incompetent, reckless or negligent architects would ultimately be excluded from the market by increases in their professional

indemnity insurance premiums, until this occurred consumers would suffer considerable inconvenience and expense.

7.6 Professional indemnity insurance

Discussion point 16

Is there any evidence that the current voluntary arrangements for professional indemnity of architects are inadequate?

Would consumer education about the value of selecting an architect, or other building designer with professional indemnity insurance, provide as good or better consumer protection than making professional indemnity insurance compulsory for all architects?

Should professional indemnity insurance be taken out by individual architects or by the organisation through which they practise?

Comment is sought on the merits of professional indemnity insurance and codes of professional conduct as alternative means of achieving consumer protection objectives.

The RAIA is concerned that some architects choose to practise without coverage by professional indemnity insurance. This practice exposes both their clients and themselves to risk of considerable inconvenience and financial disadvantage, together with consequent litigation, should their services fail to be adequate.

The RAIA supports the implementation of mandatory professional indemnity insurance for all key participants in the design and construction industries, together with a 10 year liability cap and apportionment or liability, based on responsibility in line with the recommendations of the Model Building Act, developed by AUBRCC 1990/91.

An education program may not reach all consumers. Mandatory professional indemnity insurance, in line with the recommendations of the Model Building Act, as outlined in the response to the previous question, will ensure that all consumers gain the protection afforded by professional indemnity insurance.

The RAIA considers that all individuals or organisations contracting to provide architectural services should be required to carry professional indemnity insurance cover. The policies of organisations should cover all employees of the organisation.

7.7 Consumer information

Discussion point 17

Is there any evidence that consumers who deal with architectural firms have difficulty identifying the person in the firm who is responsible for the service they are receiving?

The RAIA is not aware of a significant problem in this regard, but agrees with the proposal that the names of all architect principals be listed on the letterhead of a practice.

7.8 Complaint handling and discipline

Discussion point 18

Comment is invited on the adequacy of the penalties available under the current Acts.

The penalties under the present Acts are inadequate and the RAIA supports proposals for changes to handle complaints of professional misconduct against architects and to expand the range of penalties.

7.9 Illegal use of the term 'architect' or its derivatives

Discussion point 19

Does the level of complaints about non-architect providers of building design and related services justify intervention to prevent socially undesirable outcomes arising from the building design process?

Where can consumers refer complaints about non-architect providers of building design services?

The level of complaints received by the Boards of Architects in relation to non-architect providers of building design or related services suggests that confusion does exist among consumers. As such confusion may serve to diminish the confidence of consumers in registered architects and architectural organisations, the RAIA supports inclusion of provisions within the Acts to give the Boards more direct authority in this matter, together with enforceable and significant penalties as a deterrent.

At present, complaints can be referred to the Consumer Claims Tribunals and the respective industry associations. In order to seek financial compensation consumers must resort to the courts.

7.10 Complaints tribunals

Discussion point 20

Are there special circumstances in the hearing of complaints against architects which might justify the establishment of a specialised tribunal?

The RAIA supports the proposal of the NSW Board of Architects for establishment of a specialised tribunal, including lay members, legal practitioners and architects, to hear complaints against architects.

The circumstances giving rise to complaints against architects are often extremely complex and would require experts in architectural design, documentation and contract administration, in addition to the usual legal participants, in the conduct of a hearing.

7.11 Consumer representation on the Board of Architects

Discussion point 21

Comment is invited on the purpose of consumer representatives on the Boards of Architects and their method of selection.

The RAIA supports proposals that there be an increase in consumer representation on Boards of Architects. This would be seen as increasing the accountability of the Boards to the consumers of architectural services.

8. the regulation of professionals - professional standards legislation

The Professional Standards Acts are not a viable substitute for the Architects Acts. It has been suggested that the type of Professional Standards legislation enacted in NSW may be an alternative to the Architects Acts.

The NSW Professional Standards legislation is framed on the notion that limiting the liability of professionals in return for compulsory professional insurance cover will provide a level of protection for consumers in case of professional negligence. It is not intended to address the issues of education, course accreditation, admission into the profession and the maintenance of professional standards in the way that the registration system operates under the Act.

The operation of the legislation is limited to NSW and since it has only recently been enacted, with few schemes approved, its efficacy is yet to be established.

It is not a substitute for a registration system since it only covers those who elect to join both a professional association and a scheme established under the Act and therefore provides no comprehensive protection of the public interest.

*The Royal Australian Institute of Architects
28 October 1997*

**REVIEW OF REGISTRATION ACTS PURSUANT TO
COMMONWEALTH/STATE AGREEMENTS ON
NATIONAL COMPETITION POLICY**

Australian Physiotherapy Association



review of registration acts pursuant to commonwealth/state agreements on national competition policy

background

In 1995, the States and Territories signed an agreement with the Commonwealth to implement a National Competition Policy. The agreement followed the Report of the Independent Committee of Inquiry into a National Competition Policy Review (the 'Hilmer Report'). All Governments have undertaken to review their legislation and associated regulations to remove anti-competitive restrictions unless it can be demonstrated that the restrictions should continue in the 'public interest'. The National Competition Council is overseeing the process. The review of legislation includes Medical and Health Practitioner Registration Acts and is to be finalised by 2001. In Victoria, Queensland and Western Australia the reviews of Registration Acts are well advanced, New South Wales will start next year and in other States and Territories, the timing is unclear.

Current regulatory arrangements for the health professions tend to restrict the areas of practice by defining what a professional group does and then excluding others from participating - which might be seen by some to be anti-competitive. While all States and Territories are committed to the principles of *mutual recognition*, (ie registration in one State automatically confers the right to be registered in another), at this stage it appears that there is some divergence in approach between States to reshaping their registration systems. Three broad options or concepts have emerged which centre upon either registering the professional title (only), defining the profession or area of practice, or the specification of 'controlled acts' (the Ontario model) or the regulation of 'core restricted practices' - the last two being similar.

registration of title

As a leading proponent of competition policy, the Victorian Government is the most advanced in the review process and has implemented the *Osteopaths*

Registration Act 1996 and the *Chiropractors Act 1996* and will be shortly considering the *Physiotherapists Act 1978*. Section 5 of the *Osteopaths Registration Act* states that the qualifications for general registration are:

"A person is qualified for general registration as an osteopath if that person -

(a) has successfully completed a course of study accredited by the Board; or

(b) in the opinion of the Board, has a qualification that is substantially equivalent or is based on similar competencies to an accredited course; or

(c) has passed an examination set by or on behalf of the Board; or

(d) has a qualification that is recognised in another State or Territory for the purposes of undertaking work of a similar nature

The Act contains no description of the area of treatment provided by an Osteopath. Protections to the public are contained in Part 3 of the Act which is entitled 'investigations into registered osteopaths' which sets out procedures for dealing with complaints about professional conduct and investigating suspected health problems of Osteopaths. In Part 5 of the Act there are penalties for unregistered people who:

- a. take or use the title of registered osteopath or any other title calculated to induce a belief that the person is registered under this Act; or*
- b. claim to be registered under this Act or hold himself or herself out as being registered under this Act; or*
- c. carry out any act which is required to be carried out by a registered osteopath by or under an Act; or*
- d. claim to be qualified to practise as an osteopath.*

There are also some restrictions on advertising including false or misleading advertising, the use of testimonials and advertisements denigrating other Osteopaths. The *Chiropractors Registration Act 1996* contains provisions mirroring those above

which could be the outcome of the review of the *Physiotherapists Registration Act* in Victoria.

In a Victorian discussion paper relating to the review of the *Chiropractors Act*, the 'Guiding Legislative Principle of Competition Policy' is said to be:

"Legislation should not restrict competition unless it can be demonstrated that:

- (a) The benefits of the restriction to the community as a whole outweigh the costs, and
- (b) The objectives of the legislation can only be achieved by restricting competition."

An additional set of principles are espoused for regulation of practitioner groups:

"(a) The system of regulation must be in the public interest (ie regulation is for the benefit of the public, not the practitioner group).

(b) The system of regulation must be the most effective way of achieving the desired outcome (ie regulation by Act of Parliament is not a given; legislation must be clearly more effective than alternative non-legislative forms of regulation).

(c) The system of regulation should take the least restrictive form possible (ie the extent of restriction should be no greater than the minimum level that is effective in achieving the desired outcome).

(d) The benefits of regulation must be greater than the costs (ie the regulation should not impose a greater burden upon the community than the risks that the regulation seeks to minimise)."

Under the heading **Definitions** the discussion paper has this to say:

"The model does not define the practice of the profession in the legislation. Definitions in older Acts have tended to encroach on related professions or become outdated. The legislation instead focuses on protection of the professional title."

However the paper does raise the question of whether there should be restrictions on practices

that involve a 'profound' risk to the public—eg prescribing Schedule 4 medications.

the ontario model

In 1991, the Province of Ontario passed the *Regulated Health Professions Act* introducing the concept of 'controlled acts'. In this way, certain procedures (see Attachment) were restricted to professional groups authorised and considered competent to perform them safely without undue risk to the public. Those procedures or health services left uncontrolled may then be performed by anyone in open competition. This approach has been considered by the Western Australian Government as one way of meeting its obligations under Competition Policy and at the same time upholding the public interest. However more recently the WA Government has developed a draft 'template' Registration Act which is not based on the Ontario Model.

the western australian template

In June 1997, the Health Department of Western Australia circulated for comment the *Osteopaths Bill 1997* (Draft 7). The Bill, which was introduced into the WA Parliament in August is intended to be the template or model for revising all other State Registration Acts covering health professionals. While the Bill restricts the use of the title 'Osteopath' to registered persons and corporations, it also contains a definition of osteopathy as follows:

"'osteopathy' means -

(e) the static and dynamic assessment of human bio-mechanics;

(f) the diagnosis of impaired or altered function of related components of the somatic (body framework) system, skeletal, arthroidial and myofascial structures, and related vascular, lymphatic and neural elements ('somatic dysfunction'); and

(g) The alleviation of somatic dysfunction by the application of manual treatments, complemented by health education, but does not include the use of drugs or operative surgery."

The Bill also contains the following:

"Application

4. Nothing in this Act extends or applies to, or in any manner affects the practice of his, her or its profession by, or any rights or privileges of, a medical practitioner, a physiotherapist or a chiropractor....."

The Bill contains no provisions curtailing advertising but enables the Registration Board, with the approval of the Governor, to prescribe rules relating to advertising.

In Schedule 2 of the Bill there are provisions that largely exclude persons other than registered osteopaths from owning or controlling osteopathic practices. Also "the executive officer, within the meaning of the Corporations Law of the body corporate is to be an osteopath". These provisions will be seen by some, including the ACCC, to be contrary to competition policy, unless they can be justified by some demonstrated public benefit.

regulation of core practices

In September 1996 the Queensland Government released a comprehensive draft policy paper entitled 'Review of Medical and Health Practitioner Registration Acts'. While the paper takes into account obligations arising from competition policy, it follows earlier discussion papers concerning the need to generally revise the State's Registration Acts most of which are over twenty years old.

With some exceptions, the policy paper proposes that the current regime of protected titles be maintained. In our case, the titles of *ergotherapist*, *functional therapist*, *physical therapist* and *electrotherapist* will no longer be protected but *physiotherapist* and *physical therapist* will continue to be protected titles. It also proposes that the title *doctor* be confined to medical practitioners, dentists and people who have attained a PhD or other doctorate.

The paper discusses the difficulties associated with defining areas of practice due to overlap, controversy and problems of enforcement. It says: 'In

terms of current statutory definitions and clinical practice, there is an overlap between the professions of physiotherapy, chiropractic, osteopathy and massage. Some nursing and podiatry duties also come within the current definition of physiotherapy'. Furthermore, restricting a broad area of practice to a few professions may be seen as anti-competitive and may only be justified in terms of the 'broader public interest'.

Accordingly the paper recommends that a new statutory method involving regulation of 'core restricted practices' be used to protect the public. Such core practices would only be allowed to be undertaken by specified registered professions. For example, 'moving the joints of the spine beyond a person's usual physiological range' could only be undertaken by a physiotherapist, chiropractor, osteopath or a medical practitioner (exemptions would apply to students and others undergoing training under the direct supervision of a registered practitioner). However the paper does not see, for example, the therapeutic use of electrical equipment as being in the category of core practices and envisages that this could be regulated separately.

The policy paper proposes that the present controls exercised by Queensland Registration Boards over advertising be removed and the Boards to be limited to a monitoring role of advertising, 'but only as it relates to clinical practice matters'. Advertising is generally regulated in Queensland by the *Fair Trading Act 1989*.

I am advised that due to the approach taken in Victoria, and the potential for demarcation disputes between some professions, Queensland has yet to prescribe and allocate core practices.

**COMPETITION POLICY —
PROFESSIONS AND THE PUBLIC INTEREST**

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**The
Institution
of Engineers,
Australia**

key issues for the professions

1 Definition of the Public Interest

The current absence of any clear definition of what might be held to constitute the public interest in a particular instance becomes a most important issue in relation to the delivery of professional services, especially since there are no international comparisons which can readily be drawn upon. The National Competition Council has failed to offer any clear and lucid interpretations.

2 Mutual Recognition

The advances made over recent years by most professional groups and by State and Territory Governments in facilitating the mutual recognition of professional qualifications by Australian jurisdictions, and harmonising registration procedures and criteria, may be placed at risk by the current trend whereby States and Territories review the relevant legislation without consulting other jurisdictions which might be affected.

3 International Recognition

The move towards competency-based assessment, and the achievement of mutual recognition within Australia and between Australia and New Zealand, have provided a secure framework against which a wide range of international mutual recognition agreements have been crafted, to the considerable benefit of Australian professionals delivering services overseas. These benefits have, of course, flowed more widely into the Australian economy. Such agreements will be placed under threat if, in an effort to comply with the ideology of competition, the restrictions currently placed upon unqualified persons from delivering professional services, or from holding themselves out as competent to deliver such services, are removed without very careful consideration being given to the arrangements which might replace them.

4 Informed Consumers

Symmetry of information and a reasonable balance of negotiating power are fundamental requirements of an open and competitive market. Neither factor is necessarily present in dealings which involve the delivery of professional services. The National Competition Council has yet to explain what steps would be taken to assist the general public to take informed decisions in partially or completely deregulated professional markets.

5 Credible Review Processes

The actual processes being followed in undertaking reviews are of concern to the professions. The asymmetry of resources and time between reviewers and the reviewed is a significant issue. Often, those responding to the reviews are working full time in their particular field. There is a real need to ensure that an exchange of information takes place on how various jurisdictions are reaching their conclusions.

introduction

Recent developments in the social and economic structures in almost all developed countries have called into question the control systems which have traditionally underpinned delivery of professional services. Issues currently under public debate include:

- the mechanisms by which the community can influence the technical and ethical standards maintained by practitioners;
- the extent to which practitioners who deliver professional services can be expected to recompense their clients for losses that may, not always fairly or completely, be attributed to shortcomings in those services; and
- the range of measures through which community health, welfare and safety can effectively be protected while encouraging responsible competition in delivering professional services.

The political and economic climate in most developed countries over recent years has been characterised by the following trends:

- minimisation of prescriptive regulation;
- progressive shedding of expertise by the public sector;
- competition as the main driver of economic efficiency;
- reduced public sector intervention in commercial activities;
- replacement of statutory controls by private certification;
- increasing resort to litigation as a compensation mechanism.

These trends are inter-related, and seem essentially to represent a reaction to the actual and perceived shortcomings of the complex, and typically highly centralised, systems of political and industrial checks and balances which had developed over the preceding fifty years.

There is a curious discontinuity between a general acceptance by voters of the argument that a more competitive and less risk-averse economic system is essential in order to achieve key social and political goals, and their equally widespread failure to understand that risk exists in all aspects of human endeavour, and is inseparable from delivery of professional services. This discontinuity may stem, in part, from the fact that professional services, by their nature, involve significant asymmetry of knowledge between the provider and the consumer.

Within a market economy, governments which seek to provide a measure of protection for less informed or less resourceful members of the community can:

- provide an ambulance service at the base of the cliff;
- set up large warning notices at the top of the cliff; or
- erect a protective fence around the danger area.

Most variations on these themes have been put in place in at least one jurisdiction and in respect of at least one group of professional services. In Australia, for example, governments have, in different circumstances:

- established inspection services to oversee certain aspects of the work of professionals;
- allowed occupational titles to be reserved for appropriately qualified persons; and
- restricted to such persons the right to deliver specified services.

definitions

There can, of course, be considerable argument as to what activities might actually constitute professional services, and the boundaries become progressively more blurred as technological developments place increasingly sophisticated diagnostic and advisory services within the reach of the traditional clients for such services.

For the purposes of the present paper, it seems appropriate to record at this point definitions which have relatively recently been developed of a professional engineer and professional engineering services. These definitions were developed in the course of discussions with the State Government in Queensland. While having no formal standing, they seem to have gained considerable informal currency, and to represent a fair statement of current perceptions.

• Professional Engineer

A person who has:

- » been assessed as meeting the relevant national competency standards; and
- » is registered with an approved professional body or association; and
- » takes responsibility for delivering professional engineering services.

- **Professional Engineering Services**

Services which, in the absence of a prescriptive standard, require the application of engineering principles and data to a design or production activity, or to the provision of advice that is based on engineering principles and data and relates to such an activity.

- **Prescriptive Standard**

A document which sets out the procedures and criteria required to enable a person who is not a professional engineer, but who possesses other competencies that are defined in that document, to take full responsibility for part or all the design, production and maintenance of a specified system or component in such a manner as to secure the health, welfare and safety of persons using that system or component for its normal purposes.

the public interest

An intelligent debate on this issue is essential. It is of great concern that the organisation charged with overseeing the implementation of the reviews has, to date, failed to address the issue in any very substantial manner.

More should be expected from the National Competition Council as the leading organisation in charge of the implementation of competition policy. Simple sporting analogies are at best trivial and at worst seriously misleading. Such analogies often leave out the inherent factors underlying all sports which, if subjected to the kind of review called for under the National Competition Policy, would almost certainly be deemed anti-competitive.

For example, all sports are based on agreed rules, and most involve on the spot regulators empowered to enforce and interpret those rules. The rules are generally comprehensive, and extend to the dimensions and characteristics of the field of play as well as defining how the game is played, what rewards and penalties are to be applied, and what is and is not acceptable conduct.

There has been very little work done on exactly how to undertake cost benefit analysis where qualitative rather than quantifiable issues are at stake. The Office of Regulation Review has produced a detailed document on regulation impact statements which clearly states that qualitative criteria are every bit as valid in cost benefit analysis as quantitative. The document notes that:

Intangible effects are those effects which are difficult to quantify. Intangible impacts affect people's satisfaction but there is no economic market for them. Examples include time, health, comfort, environmental amenity and cultural values. Intangible effects should be included in an impact analysis and are as important as the effects which are easier to quantify.

Given that the public interest is a nebulous entity and not easily identified, it is vital that the debate is carried out on a sophisticated and comprehensive basis, and extends to all aspects of the concept, including economic efficiency and environmental and social issues. While an argument can be made that the need for such debate is inherent in the original competition policy agreement, the issue of what factors are to be examined in public interest assessments is yet to be finally resolved, and the Industry Commission is about to embark on a study which is almost certain to argue that public interest should only be defined in economic efficiency terms.

Professional services typically require the mastery of special knowledge and skills gained from an approved, and generally structured, process of education, examination and training at a high and continuing level. By definition, many clients for such services cannot be fully aware of all the issues involved, or be in a position sensibly to assess the relative merits of competing claims, an effect usually described as asymmetry of knowledge.

Most jurisdictions therefore require that professional services only be delivered by persons who possess the necessary knowledge and skills and who have committed themselves to observe high standards of personal and professional conduct.

The code of ethics for a professional body typically recognises that situation by requiring:

- that practitioners are accorded sufficient independence from administrative direction to allow them to reach sound and unbiased decisions within their field of expertise;
- that practitioners must at all times place responsibility for the welfare, health and safety of the community before their responsibility to the profession as a whole, to sectional or private interests, or other members of the profession; and
- that practitioners must practise only within their areas of competence, and must inform their clients when they judge that a professional service, which they have been asked to provide, requires skills and knowledge beyond those which they can offer.

There are substantial hazards to the community when persons who lack the requisite skills and knowledge, and who are not accountable, save possibly through the civil courts, to any independent body of expertise, are free to deliver professional services or to certify that all relevant standards have been observed in a given project or program. The public interest can be protected most effectively, and with least impact on the level of responsible competition in an open market, when professional bodies, in collaboration with statutory licensing bodies where these exist, and ideally with legislative recognition where they do not, have power:

- to set and enforce standards for entry to any class or grade of membership;
- to certify competence to undertake professional practice in that class or grade;
- to require members to adhere to a stringent code of ethics;
- to deal with alleged breaches via appropriate disciplinary procedures; and
- to impose penalties, including suspension or termination of membership.

Equitable entry standards would normally require candidates to demonstrate:

- appropriate skills, knowledge and technical competence;
- a capacity to apply and extend these resources in practice;
- significant professional experience on which to draw;
- a commitment to ongoing professional development;
- satisfactory professional performance; and
- an understanding of the principles of professional practice.

Acceptable principles of professional practice would clearly exclude provisions aimed at setting and enforcing minimum fees or charges for professional tasks or activities. In passing, it may be worth commenting that restrictions of this nature are not self-evidently undesirable in all situations, and have sometimes been defended as offering an indirect assurance that an acceptable minimum quality of service can be delivered. However, a requirement that specific justification be obtained for such restrictions on the grounds of public interest seems a more reasonable limitation on professional freedom than certain other features of national competition policy.

There is obviously no place in this context for:

- entry being controlled otherwise than by demonstrated competence to practise;
- codes of conduct which reduce competition between responsible practitioners; or
- quality control and disciplinary mechanisms which are ineffective or self-serving.

Membership standards, while ideally reflecting world best practice in the relevant areas, should not be so framed as to be unreasonably restrictive. All concerned should recognise that in the absence of standards imposed by professional associations upon the honesty and competence of individuals who deliver professional services, community pressure will eventually result in the imposition of standards, often highly prescriptive in nature, on

the services they deliver and/or the products based upon such services. Standards of this kind are inevitably inimical to good design and innovative enterprise, and ultimately detrimental to the broader public interest.

mutual recognition

There is a real danger that uncoordinated application of existing policies may negate recent achievements in this field. For many professions, mutual recognition agreements within Australia have only recently been achieved, principally as a result of continuing pressure and commitment by the professions themselves. The legislative review process being undertaken as part of the competition policy implementation process could impact negatively on mutual recognition agreements and, by implication, international agreements. This risk arises because States and Territories are reviewing professional registration acts individually rather than within the context of a coordinated national approach.

At the outset of the review process there was an expectation that, where mutual recognition considerations were a factor, States and Territories would undertake national reviews. So far, however, the States and Territories have been able to agree upon only one quasi-professional area to be subjected to national review, that of travel agents. Either national reviews should be undertaken of all Acts which have mutual recognition implications, or, if individual legislative reviews do result in changes to registration arrangements, there should be an over-riding requirement that the changes not disrupt existing mutual recognition agreements.

The actual roles which the ACCC and the NCC intend to take in this process are still unclear. For example, if the ACCC has, after a recent examination, determined that the arrangements for the architectural profession, which amount only to statutory protection of the right to use the title "Architect" rather than any reservation of the right to deliver professional services, fall within the guidelines for National Competition Policy, will that determination carry any weight in subsequent individual legislative reviews?

On the other hand, if a State Government review results in the decision that the existing arrangements for some other profession are satisfactory, can the ACCC determine otherwise? Such uncertainty and potential instability in the regulatory regime are not good for industry.

international agreements

Domestic and international policy decisions must be properly coordinated. However, there is a real danger that recently achieved international mutual recognition agreements may be placed in jeopardy, as a result of the potential break-down in domestic mutual recognition and withdrawal of statutory recognition of professional benchmarks.

informed consumers

Unless consumers receive adequate and accurate information, competitive markets will not work to their optimum level. The legislative review process, to be considered in more detail below, requires that all those legislative items which have been identified as potentially containing anti-competitive elements are reviewed. The onus of proof has been changed so that it is now up to those who benefit from the changes to demonstrate, in public interest terms, that the "anti-competitive" elements should remain.

Because the onus of proof has changed, it is vital that consumers are able to participate in the legislative reviews in a meaningful manner. This should be a central priority for the National Competition Council, as the representative of the general public interest, but the imperative has to date received much less attention that it deserves.

legislative review process

Australia is the only country in the world to have undertaken this particular activity. Other countries have deregulated and privatised, but a process of subjecting individual pieces of legislation to competition scrutiny, and assessing it systematically against public interest criteria, has not been attempted elsewhere

As a major contribution towards implementing competition policy, the State, Territory and Commonwealth Governments agreed to undertake the current legislative review, and the Commonwealth Government provided substantial incentives to ensure that the promises were carried through. All jurisdictions were required to identify pieces of legislation which they considered might contain anti-competitive elements. The procedures and criteria by which each jurisdiction should determine whether or not such elements existed was not determined in advance, and the approaches taken have been far from consistent.

This is evidenced by the fact that the number of legislative items under review differ very substantially between the jurisdictions, and appear to bear no consistent relationship to the scale or complexity of the regional economies involved. The numbers of items under review are understood to be as follows:

Victoria	441
New South Wales	190
Tasmania	213
South Australia	160
West Australia	242
Northern Territory	92
Commonwealth	98

Determining the balance between public interest and competition will have to be decided by those public servants undertaking the reviews. However, it is important to acknowledge that research into how the public interest is defined, and then factored into competitive reviews, has to date been virtually non-existent.

self regulation

Professional services account for a significant and increasing proportion of national and international trade. In Australia, most of these services have been subject to detailed oversight by government agencies. In recent years, pressures for smaller government and less intrusive and prescriptive regulation have resulted in quality assurance being widely recognised as an alternative mechanism to central control for securing the public interest.

Quality assurance for organisations requires satisfactory structures, procedures and criteria to be in place. However, sound procedures and criteria are useless unless the individuals charged with implementing them have the skills, experience and judgment required to make accurate and timely decisions. Quality assurance systems for individuals must clearly focus on their competence to make such decisions. While debate continues, thoughtful commentators have concluded that, provided provision is made to inhibit the development of restrictive practices, professional self-regulation normally represents the most effective form of individual quality assurance.

national professional engineers register

Recent developments relating to professional engineers provide a useful case study of the action being taken by professional associations to develop and implement credible processes for self-regulation in a competitive economy.

The Institution of Engineers, Australia is widely recognised, in Australia and overseas, as the body representing the engineering profession in Australia, and responsible for professional recognition and certification.

Statutory acknowledgment of that role has existed in Australia in virtually all areas of engineering practice. Obvious examples include delegation to IEAust by the National Office for Overseas Skills Recognition of responsibility for assessing migrant qualifications, and recognition by the Commonwealth Government as the exclusive National Competency Authority for professional engineers. IEAust thus has a mandate to establish and enforce standards and policies appropriate for a self-regulating engineering profession.

Along with that mandate comes the responsibility to provide a framework of recognition for competent practitioners, whether or not they wish to become IEAust members, and to ensure that oversight of any scheme to identify practitioners whose qualifications, recent experience and commitment to continuing professional development equip them to deliver professional engineering services

is separated from the internal operations of the IEAust.

The National Professional Engineers Register was developed by IEAust as a vehicle to meet these challenges. The register records the disciplines in which registrants have demonstrated that they have the skills, knowledge and experience which are generally accepted as being appropriate for independent practice, and provides certification and, as relevant, implements periodic auditing of their:

- academic qualifications;
- initial professional formation;
- continuing professional experience;
- continuing professional development; and
- commitment to ethical conduct.

Registration in an appropriate category offers a reliable indicator of a practising professional engineer committed to maintaining the currency of their skills and knowledge and to meeting established ethical standards, ensures that such an engineer will be held accountable for their performance in practice areas associated with these categories, and:

- provides a consistent national database of expertise;
- avoids inconsistent, ineffective, and anti-competitive local listings;
- facilitates access to reliable, affordable professional indemnity insurance;
- adds value to professional practice, especially in relation to non-members;
- creates an effective mechanism for community input to professional standards;
- aligns professional engineering standards in Australia to world best practice; and
- facilitates national and international practice by those listed on the register.

The register is increasingly being cited as the preferred benchmark qualification in subsidiary legislation, regulations, standards, and contracts. However, if schemes of this kind are to have a sufficient impact upon market perceptions to act as a satisfactory replacement for the more traditional forms of direct legislative intervention, there need

to be more attention given to creating a statutory framework within which they can operate, a regime which might be more concerned with the right to use a particular occupational title or titles than the right to deliver the services themselves.

conclusions

It is important to keep questioning the assumptions surrounding competition policy and the values it espouses. For example, legislative items under review include the Child Care Act 1991, Child Care (Child Care Centres) Regulation 1991 and the Child Care (Family Day Care) Regulation 1991. Such legislation provides for licensing of child care services, such as kindergartens, child care centres, and family day care centres, and prescribes matters such as

- qualifications of child care personnel;
- building and physical environment standards;
- minimum staffing levels;
- maximum capacity;
- food and safety standards; and
- required content for child care programs.

The operation of child care facilities may even be prohibited in certain locations. Examples include premises adjacent to a place where flammable materials or dangerous chemicals are manufactured or stored. These are all clearly anti-competitive elements, which increase the cost of providing child care services and restrict entry to the market by entrepreneurs. How are public servants to determine whether or not the (fairly readily quantified) cost impacts of the restrictions are balanced by the (obvious, but less readily quantified) benefits to the public interest?

Certainly, each review should have clear terms of reference which includes a commitment to clear, transparent and consultative processes, and binding requirements should be imposed on those undertaking reviews fully to inform all those, professionals and consumers alike, who may be affected by the outcomes.

Proper accountability processes must apply to public reviewers and the decisions they make. This can only be achieved if it is clear from the outset what they are reviewing, hence the need for comprehensive terms of reference for all legislative reviews. There are a number of examples where reviews are being undertaken with no terms of reference having been developed or promulgated by the responsible department.

Finally, and on behalf of the professions generally, I would like to congratulate the House of Representatives Standing Committee on Financial Institutions and Public Administration for the following recommendation regarding mandatory terms of reference.

Clear terms of reference should be developed for the review, including identification of the factors, whether in the list of factors set out in subclause 1(3) or otherwise, that the decision maker believes are relevant. Terms of reference should be agreed by the relevant Minister.

Let us hope that this recommendation can be taken as an indicator that at least some of our parliamentary representatives have come to realise the dangers attendant upon the deregulated application of controversial economic theory by poorly-informed public servants anxious to deliver the outputs necessary to facilitate an ongoing flow of funds from the Commonwealth Government to the States and Territories.

appendix



**HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION**

CULTIVATING COMPETITION

**REPORT OF THE INQUIRY INTO ASPECTS OF THE
NATIONAL COMPETITION POLICY REFORM PACKAGE**

TABLING SPEECH

MONDAY 23 JUNE 1997

DAVID HAWKER MP, CHAIRMAN

Mr Speaker this is the first report of the Committee in this new Parliament and I am pleased to say that the Committee reached unanimous conclusions and recommendations.

Competition policy is a critical area of reform for the public sector. This policy is about ensuring that where public ownership exists, competition should apply.

The inquiry spanned two Parliaments and our report comes two years after the signing of the COAG agreement on the reforms by the Commonwealth and all State and Territory Governments.

That agreement represents a major step forward in inter-governmental relations, as well as bringing the potential for large and lasting economic benefits to the Australian community.

The significant benefits arising from competition reform have been recognised by all levels of government, and all major political parties.

The expected benefits for ordinary Australians are: price reductions, lower inflation, more growth, more jobs, and uniform protection of consumer and business rights across the whole country.

More specifically the Industry Commission has estimated that the long run annual gain in real GDP is of the order of 5.5%, or \$23 billion a year, as a result of the cumulative effect of the Hilmer and related reforms.

In this report the Committee focuses on making a constructive contribution to the debate on how the policy is being implemented. It has not sought to re-define the policy and it is too early for the Committee to conduct a detailed evaluation of the outcomes. Nor have we looked at the specific impact of the reforms in particular sectors.

After two years of implementation, the reform policies of most jurisdictions are now firmly in place. Overall, the Committee was impressed by the amount of effort parties have put into meeting their obligations under the Competition Principles Agreement. The Committee also notes the progress that has been made to date. Much, of course, remains to be done.

In this report the Committee has addressed three crucial aspects of implementing the reforms.

First, the 'public interest test' which is a pivotal element of the policy. The Committee has outlined its interpretation of the test and it believes there should be some consistency of approach throughout jurisdictions. Accordingly, it has outlined what it sees are the basic principles that should guide the application of the test in all jurisdictions.

Second, community service obligations which are an integral part of the system of all levels of government in this country. Competition policy has reinforced and encouraged a greater awareness and systematic evaluation of CSOs. In the Committee's view the delivery and funding of CSOs should be assessed on a case-by-case basis. Attention should more strongly focus on their ongoing transparency and relevance, with appropriate reporting and monitoring systems for CSOs being implemented.

Thirdly, at the commencement of the inquiry in mid-1995, local government held significant concerns about the reforms. Whilst many of these have been allayed, some remain.

An area of critical concern to local government is the taxation of local government businesses. The Committee shares that concern. We have recommended the Treasurer address that issue as a matter of priority in COAG, as under the current regime there is a powerful incentive for local government not to corporatise.

The Committee has also addressed concerns about the application of the reforms to local government in rural and remote localities and has put forward suggestions to meet these.

Shortly the Treasurer will be making his assessment of how the State and Territory Governments have met their obligations under the Agreements and he will be determining the funds they will receive as their share in the benefits arising from implementing the reforms.

Significant funds are at stake. Total National Competition Policy Payments to State and local government over the next nine years will be \$16.1 billion. Of that amount Competition Payments account for \$215.1 million in 1997-98. Payments are conditional on the State and Territory Governments meeting certain targets in implementation.

To encourage transparency, the Committee has recommended that the Treasurer ensure that the assessment is performance based, and that he make details of the outcomes and process publicly available following each tranche's assessment.

Local government's quest to share in the Competition Payments, as well as the Financial Assistance Grants, is a matter for each State and Territory Government to decide.

The Committee has also recommended that COAG look at the more general issue of the dual role of the National Competition Council of both advising on implementation and assessing implementation of the reforms.

Given the scope of the reforms, their potential to substantially impact on the lives of all Australians, and the relative newness of the policy, it is critical that there is adequate public education and consultation about the reforms, and their progress. The Committee has recommended such public education arrangements be put in place early, by all agencies involved in implementing the reforms.

There are many people to be thanked for their hard work on the inquiry and report. In particular: the members of this Committee and its predecessor; the Commonwealth and all State and Territory Governments for their cooperation and contributions; the many industry, local government and community organisations and individuals who provided evidence; our adviser in both Parliaments - Jim Dick; and all the secretariat staff who worked on the inquiry in both this Parliament and the last.

I commend the report to the House.

LIST OF RECOMMENDATIONS

Public interest test

- 1 The Committee recommends the following as necessary components of the 'public interest' process:
 - a) Responsibility for commissioning reviews (ie terms of reference, nature of the review and reviewers) should be taken at Ministerial level;
 - b) The nature of the review should be determined taking into account the significance, importance, diversity and sensitivity of the issue to be considered;
 - c) Clear terms of reference should be developed for the review including identification of the factors, whether in the list of factors set out in subclause 1(3) or otherwise, that the decision maker believes is relevant. Terms of reference should be agreed by the relevant Minister;
 - d) The process and its timing should be as transparent as possible;
 - e) A plan of the review should be developed including details of the nature of the review to be used, resources and funding, and specify key dates (start, end, advertisement, call for submissions, closing date for submissions, reporting);
 - f) Consideration should be given to variations of the process for example joint review, national review, etc;
 - g) Methodology used for weighing up the benefits and costs should take account of both quantitative and qualitative data;
 - h) The review should consider the overall, wider consequences and impacts of the decision;
 - i) Level of consultation may vary with the significance, diversity and sensitivity of the review. Consultation should involve key stakeholder groups;
 - j) Where possible reviewers should be independent of the existing arrangements with more significant, more major and more sensitive reviews demanding greater independence;
 - k) Where reviews are undertaken by persons closely involved in the activity in question, there should be provision for a review or reconsideration of the initial conclusion by some person or body independent of the relevant activity;
 - l) Results of reviews and relevant key stages in the review process shall be publicly available;

- m) Where a matter is reconsidered at a later date, similar processes to those that applied to the initial consideration should be followed; and
- n) The Parties should coordinate their efforts to achieve a common set of basic principles to apply the 'public interest test' as outlined in (a) to (m) above.

The Committee recommends all jurisdictions should publish guidelines encompassing the application of the 'public interest test'. (paragraph 2.76)

Community service obligations

- 2 The Committee recommends that all CSOs be explicitly defined and their details made publicly available. (paragraph 3.41)
- 3 The Committee recommends that the Council of Australian Governments address ways of better coordinating the provision of community service obligations and welfare payments to safeguard the equitable distribution of payments and benefits for all recipients. (paragraph 3.47)
- 4 The Committee recommends that the funding arrangements for both existing and new community service obligations be transparent and assessed on a case-by-case basis. (paragraph 3.74)
- 5 The Committee recommends that any decision by a party to contract out the provision of community service obligations is most appropriately made on a case-by-case basis. Any contracting arrangement should contain clearly identified performance criteria and exit provisions. (paragraph 3.90)
- 6 The Committee recommends all governments:
 - a) require their government business enterprises to include in their annual reports and corporate/business plans or other publicly available documents detailed information on the objectives, definition, costing, funding and contracting arrangements for community service obligations; and
 - b) implement effective monitoring programs for community service obligations and ensure that those programs be outcome oriented. (paragraph 3.100)

Implications for the efficient delivery of services by local government

- 7 The Treasurer as a matter of priority address the issue of taxation of local government businesses at the next meeting of the Council of Australian Governments as under the current regime there is a powerful disincentive to corporatise. (paragraph 4.54)

- 8 The Committee recommends that State and Territory Governments encourage their local councils to more urgently implement appropriate accounting and financial management systems to assist resource allocation decisions, including those relating to community service obligations. (paragraph 4.63)

Related issues

- 9 The Committee recommends that following the completion of the current assessment round the Council of Australian Governments evaluate the dual role of the National Competition Council to determine if both roles are appropriate. (paragraph 5.12)
- 10 The Committee recommends the National Competition Council adopt a more open approach to its work and be more active in disseminating information about the activities of the Council and National Competition Policy. (paragraph 5.15)
- 11 The Committee recommends that the review of the need for and operation of the National Competition Council after it has been in existence for five years be an independent review and if the review determines the Council is to continue, a sunset clause on this matter be inserted into the Competition Principles Agreement. (paragraph 5.18)
- 12 The Committee recommends that the Treasurer ensure that:
 - a) the assessment for payment of both the Financial Assistance Grants and Competition Payments be performance based and reflect both the spirit and intent of the competition policy reform legislation and the inter-governmental agreements; and
 - b) details of the assessment outcomes and process are made publicly available following each tranche's assessment. (paragraph 5.32)
- 13 The Committee recommends that the State, Territory and Commonwealth Governments put in place measurement and monitoring systems so that the outcomes of implementing national competition policy can be adequately assessed in the future. (paragraph 5.34)
- 14 The Committee recommends that all agencies involved in the implementation of national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes. (paragraph 5.39)