

**Review of the
Psychologists Act 1989**

Report

DECEMBER 1999



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EXECUTIVE SUMMARY AND SUMMARY OF RECOMMENDATIONS

Introduction (Chapter 1)

The Council of Australian Governments (COAG) Competition Principles Agreement provides that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition and that the objectives of the legislation can only be achieved by restricting competition. The Review of the Act has been carried out by the Department's Legal and Legislative Services Branch.

In addition to the matters arising under the Agreement, other matters were considered including:

- (i) recommendations made by the NSW Ombudsman in 1995 for amendments to the Act;
- (ii) the introduction of more recent legislation for other registered health professionals; and
- (iii) the introduction of the Health Care Complaints Act 1993.

The Department has prepared this Report for consideration by the Minister for Health, the Hon Craig Knowles, MP and the NSW Government in satisfaction of the review requirements under the Agreement.

Overview of the Current Act (Chapter 2)

The principle requirements of the Act which may have an impact on competition can be summarised as follows.

- The restriction on the use of the title “psychologist” by unregistered persons may confer a competitive advantage on psychologists over other service providers.
- The requirements for registration may restrict competition where the number of persons that may gain registration (and hence the right to use the title “psychologist”) is limited beyond that which is necessary to ensure that the objectives of the Act can be achieved. Similarly, the power to impose conditions can, in certain cases, limit competition.
- Regulation of conduct through the *Code of Ethical Conduct*, the complaints and disciplinary system, or statutory restrictions on conduct although generally directed at ensuring high standards are adopted by practitioners, may inappropriately focus on the commercial conduct of psychologists thus limiting information to consumers on the different services available.

A range of new regulatory requirements were canvassed in the Issues Paper and these are also assessed to ensure that they accord with the review principles.

The Objectives of the Legislation (Chapter 3)

The Department is of the view that there is a continuing rationale for intervention to minimise the risks of harm or injury to consumers of psychological services. The objective of legislation regulating the psychology profession has been identified as the minimisation of the risks of harm for consumers of psychology services.

Recommendation 1

That legislation providing for the regulation of psychology include the following:

The objective of this Act is to provide adequate protection to consumers of psychologists' services from the risks of serious harm or injury by enabling them to make informed decisions regarding such services.

Registration of Psychologists and the Restriction on Title (Chapter 4)

The primary form of intervention through which the Psychologists Act 1989 seeks to achieve this objective is through the establishment of the registration system and the placement of restrictions on who may use the title 'psychologist'. The restriction aims to achieve the objectives of the legislation by providing consumers with a simple and understandable means of identifying practitioners capable of providing the full range of psychological services.

Although, there are no systematic studies on injury rates (and subsequent costs arising from injury) from either before or after the Act was introduced which can be used to quantify the benefits likely to result from registration, the Department is of the view that this system is likely to produce an overall benefit to the community because it provides simple information to consumers about the competence at entry level and ethical standards of those holding themselves out as psychologists. Increased complaints and disciplinary action in recent years suggests the Act is having a positive effect in regulating psychologists. As titles legislation, other service providers continue to operate in competition with psychologists, minimising the costs for consumers. Other options have been considered, however, the Department has concluded that they are unlikely to meet the objectives of the legislation.

Recommendation 2

That psychologists continue to be registered by title .

The Need for Further Restrictions (Chapter 5)

Some submissions argued that the Act should also restrict the practice of psychology so that consumers could only seek psychological services from registered psychologists. This is not supported by the Department given the wide range of other service providers that provide some or all of the services provided by psychologists. Similarly, calls to restrict the titles of 'psychotherapists' and 'counsellor' so that they may only be used by registered psychologists are not supported.

Many submissions also argued for a system of specialist registration to be established under the Act. While such systems can provide overall benefits to consumers by improving the quality of information, the Department is not satisfied that such a system would produce overall benefits for consumers beyond that which would arise if the profession itself established such a system.

The review has considered the current regulatory framework for the regulation of psychological testing. While the existing requirements in the *Code of Ethical Conduct* address some of the concerns in regard to such tests, the Department considers that amendments to the Code should be further

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considered to improve the availability of information to psychologists and consumers regarding tests and variations from testing practices.

Recommendation 3

That further consideration be given to proposals:

- *for the Board to establish criteria for the acceptability of tests;*
- *to specify a list of unacceptable tests in the Code of Professional Conduct;*
- *to include a requirement in the Code of Conduct for practitioners to disclose to clients where they have varied from standard testing procedures.*

Entry Requirements (Chapter 6)

The current Act requires practitioners to hold an academic degree of four years training and then complete two years of supervised practice. While the Department is of the view that such requirements are necessary to ensure that practitioners are competent to hold themselves out as psychologists, minor amendments have been recommended to improve the processes for accreditation of courses and programmes of study which incorporate supervised practice requirements. A range of other amendments are also recommended to ensure that practitioners are competent to practice at the time of granting registration.

Recommendation 4

That the Psychologists Act be amended to:

- (i) *provide that educational institutions may apply to the Board to have courses accredited for the purposes of section 6(iii), with a right of appeal to the Administrative Decisions Tribunal, where they can demonstrate the course produces graduates with an equivalent level of attainment to graduates of a four year programme of study.*
- (ii) *clarify section 6(i) so that criteria can be set by Regulation to determine when a course has sufficient specialisation in psychology.*

Recommendation 5

That the Psychologists Act be amended to enable combined academic/practical courses to be recognised for the purposes of supervision.

Recommendation 6

That the Act be amended:

- ▶ *to provide that the Board may refuse registration (either conditional or full) where a person does not have sufficient skill or proficiency in English;*
- ▶ *to provide that the Board may impose conditions on full registration where:*
 - (i) *an applicant has been the subject of disciplinary action in a foreign jurisdiction;*
 - (ii) *the practitioner is affected by an impairment;*
- *provide that conditions be recorded in the register and practitioners the subject of conditions be prevented from holding themselves out as full registrants.*

Regulation of Conduct And Market Information (Chapter 7)

The Act regulates the conduct of those holding themselves out as a psychologist through specific statutory restrictions on conduct (eg regulation making powers over certain advertising); a Code of Professional Conduct; and a complaints and disciplinary system. The Department has concluded that the existing disciplinary system results in overall benefits for consumers. While it is recognised that such systems may inappropriately focus on commercial conduct, no evidence has been presented to suggest that this has occurred in practice. In fact the grounds for complaint appear to be clearly directed to issues of fitness to practice. A range of amendments are recommended to update the disciplinary system in line with more recent legislation. The Department has supported the retention of a Code of Professional Conduct although recommendations have been made to establish a clear process for the making of such a Code. The Minister will be required to approve the Code, following a public consultation process and the release of an impact assessment report. Existing regulation making powers over advertising and premises have been recommended for removal.

A number of other amendments have also been identified to improve the operation of the legislation's complaints and disciplinary system, including adoption of a two-tiered definition of misconduct. In the Issues Paper, the Department also proposed reform of the current arrangements for handling complaints under which the Board imposes sanctions following a hearing by a professional standards committee or the Board. These arrangements raise significant natural justice concerns, particularly in matters where a practitioners livelihood may be at stake.

The Department has developed two options for further consultation.

- ▶ **Option 1** would involve the establishment of the two-tiered disciplinary system as used under the Medical Practice Act 1992, the Chiropractors and Osteopaths Act 1991 and the Nurses Act 1991. Professional Standards Committees (PSCs) would deal with less serious complaints of unsatisfactory professional conduct and Tribunals would deal with serious complaints of professional misconduct.
- ▶ **Option 2** is based on the complaints handling and disciplinary model which exists under the *Dentists Act 1989*. The disciplinary structure in the Dentists Act provides, amongst other things, for the Dental Care Assessment Committee (DCAC) to conciliate and investigate complaints about dentists and make recommendations to the Board for their resolution. If DCAC type bodies were to be established within the legislation for the registration of psychologists the Department envisages them replacing PSCs on the basis that this structure provides a more flexible consumer claims oriented mechanism for less serious complaints. Matters requiring a hearing for unsatisfactory professional conduct would be conducted before the Board in an informal atmosphere. Serious matters involving deregistration would be dealt with through a hearing before a Tribunal.

Although further consultation on this issue is necessary, the Department has a preference for the second option primarily because it establishes a more consumer focussed complaints handling system. In particular, it allows for a broader range of complaint matters to be dealt with.

Recommendation 7

That the Psychologists Act be amended to:

- . *remove the regulation making power over advertising and premises;*
- . *remove the prohibition on advertising qualifications that are not recorded on the register.*

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Recommendation 8

That the Act be amended:

- (i) to require the Board to release a draft Code and impact assessment report for public comment;*
- (ii) to require the Code to be approved by the Minister;*
- (iii) to clarify that a breach of the Code may be considered as evidence of unsatisfactory professional conduct or professional misconduct.*

Recommendation 9

The Department supports the retention a statutory system for receiving and handling complaints against psychologists.

Recommendation 10

That the legislation be amended to replace the definition of professional misconduct with a two tiered definition of unsatisfactory professional conduct and professional misconduct.

Recommendation 11

That the Act be amended to provide the Board with a power to suspend or impose conditions on a practitioner where it is necessary to protect the life or physical or mental health of any person

Recommendation 12 - Revised disciplinary structure

That further consultation be undertaken during drafting of legislation to regulate the psychology profession on a revised disciplinary structure whereby:

- ▶ An Assessment Committee will be established to consider and investigate complaints, referred from the relevant Board, regarding professional fees and standards of professional services. The Assessment Committee will be able to conciliate and investigate consumer complaints and to make recommendations to the relevant Board for the resolution of those complaints or any further action the Committee considers should be taken. When a Committee recommends that there be an inquiry into unsatisfactory professional conduct or professional misconduct the Board must conduct an inquiry or refer the matter to the Tribunal for a hearing.*
- ▶ The relevant Board will hear complaints of unsatisfactory professional conduct following investigation of a complaint by an Assessment Committee, the Health Care Complaints Commission or the Board's own inspector.*
- ▶ A Tribunal will be required to hear complaints of professional misconduct.*

Recommendation 13

That the legislation be amended to remove the power of disciplinary bodies to fine practitioners following disciplinary hearings.

Recommendation 14

That the legislation be amended to provide that disciplinary bodies may order that a practitioner take advice on the management of their practice if a complaint is proved.

Recommendation 15

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That the legislation be amended to provide for the mandatory referral of criminal convictions and other prescribed matters to the Board.

Recommendation 16

That the legislation be amended:

- ▶ *to require applicants for registration (including applicants for re-registration) to make declarations regarding criminal convictions, offences proved but dealt with under s556A, and serious, sex or violence offences where the allegations relate to conduct occurring in the course of practice, disciplinary action in foreign jurisdictions and serious illness during the previous twelve months;*
- ▶ *to require practitioners to notify the relevant registration board if they are convicted of an offence reportable to the courts or if they are charged with a serious sex or violence offence where the allegations relate to conduct which occurred in the course of practise.*

Recommendation 17

That the legislation be amended to provide for the establishment of a system to deal with impaired practitioners (in conjunction with the complaints handling process) as provided for under the Medical Practice Act 1992.

Other Considerations Arising Under the Competition Principles Agreement (Chapter 8)

Many submissions argued for the introduction of a mandatory system of continuing education. However access and equity concerns were also highlighted for those in rural areas. On balance, the Department is of the view that mandatory continuing education should not be made a requirement for re-registration, however, it is proposed that the Act be amended to enable the Board (or a committee) to develop guidelines on voluntary continuing education. This would ensure that consumers have access to information, without the adverse impacts identified in submissions.

The Department has also recommended that the Act be amended to enable an Education and Research Account to be established to fund research into professional and consumers issues. This is to address under-investment in such research.

Sound record keeping practices are essential to provide optimal patient care. Further, the maintenance of confidentiality of patient notes is an important issue in the storage of records. The Department has therefore supported the introduction of a regulation making power to enable standards to be set for the creation and storage of records.

Recommendation 18

That the Act provide for a system of voluntary continuing education on the basis it will have significant benefits for consumers by providing additional information and will further achieve the objectives of the legislation.

Recommendation 19

That the Act provide for the establishment of an education and research account.

Recommendation 20

That the Act provide for a regulation making power to enable standards to be set for the making and storage of records.

Composition of the Board (Chapter 9)

It is essential that the Board has an appropriate mix of practitioners (from a variety of backgrounds), consumers, and other experience. The Department has identified a number of amendments to enhance the composition of the Board.

Recommendation 21

That the legislation be amended to:

- ▶ *replace the medical practitioner with a person to represent the interests of consumers;*
- ▶ *alter the process for the nomination of psychologist members to the Board so that an appropriate mix of professionals is represented;*
- ▶ *limit to three the number of three year consecutive terms which may be served by Board members.*

Other miscellaneous amendments (Chapter 9)

Other amendments that do not raise competition policy issues have arisen from the review. As they do not require detailed assessment in accordance with the Competition Principles Agreement, they are not discussed in detail in this Report. These amendments are set out below.

- ▶ to establish a process for the review of deregistration orders following disciplinary action based on the provisions of the Medical Practice Act 1992;
- ▶ to provide that the Board may direct a practitioner the subject of a complaint to undergo a medical or other clinical examination;
- ▶ to provide that a complaint may be withdrawn once an investigation or disciplinary action has commenced, following consultation between the Board and the HCCC;
- ▶ to provide disciplinary action may be taken or continued against a practitioner where they cease to be registered.
- ▶ An increase in penalties for breach of the Act to \$ 5,500.
- ▶ To provide for the appointment of an inspector with appropriate powers to obtain search warrants.
- ▶ To change the title “secretary” to “registrar”.
- ▶ To provide that both a business address and residential address must be recorded in the register, with limits on the release of residential addresses to the public.

1. INTRODUCTION

1.1 Background to the Review

The Council of Australian Governments (COAG) Competition Principles Agreement provides that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition and that the objectives of the legislation can only be achieved by restricting competition. In undertaking the Review, Governments agreed that:

- (i) the objectives of the legislation will be clarified;
- (ii) the nature of the legislation will be identified;
- (iii) the likely effects of the restriction on competition and the economy generally will be analysed;
- (iv) the costs and benefits of the restriction will be assessed and balanced; and
- (v) alternative means for achieving the same result will be considered.

The Minister for Health requested that the Department of Health conduct such a review to assess whether the Psychologists Act 1989 accords with the principles outlined above. The requirements to be considered during a review are set out at **Appendix A**. In addition to the matters arising under the Agreement, a number of other matters were considered including:

- (i) recommendations made by the NSW Ombudsman in 1995 for amendments to the Act;
- (ii) the introduction of more recent legislation for other registered health professionals; and
- (iii) the introduction of the Health Care Complaints Act 1993.

1.2 Conduct of the Review

The Review of the Act has been carried out by the Department's Legal and Legislative Services Branch. An Issues Paper seeking public comment was prepared by the Department in December 1996. Approximately three hundred copies of the Paper were distributed to consumers, government bodies, psychologists, professional associations and other health care professionals. Approximately sixty submissions were received by the Department. A list of submissions is attached at **Appendix B**.

1.3 The Final Report

The Department has prepared this Report for consideration by the Minister for Health, the Hon Craig Knowles, MP and the NSW Government in satisfaction of the review requirements under the Agreement. While this report is directed primarily at addressing the issues arising by way of the Competition Principles Agreement, other matters considered during the review are identified and addressed where appropriate.

2. THE REGULATION OF PSYCHOLOGISTS AND OTHER SERVICE PROVIDERS

2.1 Introduction - The Provision of Services by Psychologists

Registered psychologists provide a range of services in both health care and non-health care related settings. Psychologists undertake the following work:

- ▶ the treatment of behavioural disorders and mental illness by behavioural, cognitive-behavioural and other psychological methods;
- ▶ psychological assessment of patients by the use of standardised psychological tests and other techniques for the purpose of providing advice and reports to other practitioners, courts and tribunals;
- ▶ research into the nature, causes and modification of behaviour disorders; and
- ▶ the provision of counselling and therapy to individuals.

Psychologists are employed in government departments, hospitals, community health centres, prisons, armed forces, charitable organisations, universities and private practice. Many psychologists often have direct, unsupervised contact with patients. *Table 1* provides an overview of employment and average weekly earnings for psychologists.

Table 1 -Employment and Average Weekly Earnings and Hours Worked for NSW Registered Psychologists

| Activity | June 1991 | June 1992 | June 1993 | June 1994 | June 1995 | June 1996 | June 1997 |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Employed ^(a) | 1550 | 1690 | 1410 | 1480 | 1510 | 1530 | 1590 |
| Registrants ^(b) | 818 | 2242 | 2825 | 3031 | 3973 | 4523 | 4948 |
| Real Average Weekly Earnings | 704 | 554 | 669 | 771 | 790 | 727 | - |
| Hours worked (F/T) ^(d) | 36.3 | 38.8 | 37.7 | 34.5 | 37.1 | 36.0 | - |

(a) This represents an underestimation of actual employment as employees may not readily identify themselves as psychologists in ABS census and surveys (eg. Managers, counsellors and consultants) - *Australian Bureau of Statistics*

(b). *NSW Psychologists Registration Board* - the figures incorporate both conditional and full registrants

(c). Calculated using the IPD for GNP, 1989 - 90 - *Australian Bureau of Statistics*

(d) *Australian Bureau of Statistics*

Psychological services conservatively generate an estimated annual turnover in NSW of some \$315 million. This turnover represents payments by Health Insurance Funds, out-of-pocket expenses of insured consumers, payments by uninsured consumers and gross earnings of psychologists employed in the corporate sector where no “service” is offered to outside clients and payment is by way of salary. These services are not within a single industry but spread across several sectors including: Psychological & Business Services; Government Administration and Defence; Education; and Health & Community Services. Any

estimation of turnover should be treated with considerable caution, due to changes in industry classification and employment statistics.

2.2 The Psychologists Act 1989

The Psychologists Act 1989 was introduced after a number of reports in the 1970s and 1980s raised concerns regarding the activities of operators in the market for psychological services. The Act establishes the NSW Psychologists Registration Board which consists of nine members - five psychologists, one lawyer, one medical practitioner, one consumer and an officer of NSW Health. The functions of the Board can be summarised as follows:

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- ▶ to consider applications for registration;
- ▶ to receive complaints about registered practitioners;
- ▶ to conduct disciplinary inquiries following a complaint; and
- ▶ to develop a Code of Professional Conduct.

Restriction on title

The Act provides that only those people meeting certain registration requirements can be registered as psychologists in NSW. Those who gain registration are entitled to use the title “psychologist” or “registered psychologist”. Although unregistered persons may not use these descriptions, they may offer or provide services provided by registered psychologists. The legislation is therefore a ‘titles’ or ‘certification’ Act.

Registration requirements

Under the current Act, a person is entitled to conditional registration if they are of good character and:

- (i) have successfully completed a tertiary course of at least four years full time study specialising in psychology, provided by a tertiary institution recognised by the board; **or**
- (ii) hold or are eligible to hold such qualifications from a tertiary institution recognised by the Board as are prescribed by the Regulations; **or**
- (iii) hold or are eligible to hold such qualifications as the Board considers are equivalent to the qualifications referred to in subparagraph (i) or (ii) and have passed such examination (if any) conducted by the Board to determine whether the person has the requisite qualifications for registration.

The Board publishes a list of acceptable qualifications for registration and has advised that it relies on the Australian Psychological Society (APS) system for the accreditation of courses. In practice, therefore, applicants are required to possess: an undergraduate degree at honours level (four years); or an undergraduate degree at pass level (three years) and a post-graduate diploma in psychology (one year). No qualifications have been prescribed by Regulation under (ii). While the Board has the power to recognise other qualifications under (iii) which it considers are equivalent to those in (i) or (ii) whether they are university based or not, the Board has not recognised additional qualifications obtained in Australia which are less than four years. The power under (iii) is generally only used to recognise overseas qualifications which have been assessed as equivalent by the APS or the former National Office of Overseas Skills Recognition (NOOSR).

The Board recommends that conditional registrants refer to themselves as a ‘psychologist-in-training’ or ‘intern-psychologist’. To gain full registration an applicant must also demonstrate that they have two years practical experience satisfactory to the Board. A supervisor must complete certificates of competency in seven key areas: ethical, legal and professional matters; psychological testing; intervention strategies; interviewing, counselling and consulting; record keeping; development and maintenance of professional skills; and data collection and evaluation.

The Board may refuse to register a psychologist where:

- (i) an applicant has been convicted of an offence in any jurisdiction which in the circumstances renders the person unfit in the public interest to practise psychology;
- (ii) the person has been removed from a psychologists register in another jurisdiction¹;
- (iii) the applicant is an habitual drunkard or addicted to any deleterious drug; or
- (iv) the applicant does not have sufficient physical or mental capacity to practise psychology.

Regulation of the Conduct of Psychologists

The Act ensures that psychologists adopt appropriate standards of professional conduct. The primary means through which this is done is the complaints system. A complaint may be made to the Board (or the Health Care Complaints Commission) that a psychologist:

- (i) has been convicted of an offence which from the circumstances renders the psychologist unfit in the public interest to practise psychology;*
- (ii) is an habitual drunkard or is addicted to a deleterious drug;*
- (iii) has been guilty of professional misconduct; or*
- (iv) does not have sufficient physical or mental capacity to practise psychology; or*
- (v) is not of good character*

Under the current Act, ‘professional misconduct’ is defined as:

- (a) any conduct that demonstrates a lack of adequate:*
 - (i) knowledge;*
 - (ii) experience;*
 - (iii) skill;*
 - (iv) judgement; or*
 - (v) care*
- by a registered psychologist in the practice of psychology;*
- (b) a registered psychologist contravening (whether by act or omission) a provision of this Act or the Regulations;*
- (c) a registered psychologist’s failure to comply with an order made or a direction given by the Board under section 16 or with a condition of registration; and*
- (d) a registered psychologist’s holding himself or herself out as having qualifications in psychology other than:*
 - (i) those in respect of which the registration was granted; or*
 - (ii) those recorded in the register in respect of the psychologist; and*

¹ Note that the exercise of this power is limited by mutual recognition legislation.

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(e) any other improper or unethical conduct.

While breaches of specific offence provisions of the Act can be pursued through criminal action in the Local Court, paragraph (b) enables such matters to be pursued as professional misconduct through the Act's disciplinary system. The Act currently only contains offence provisions for use of the title psychologist while unregistered, the making of false entries in the register, procurement of registration through fraudulent means and uttering false documents before the Board. Regulation making powers are included in the Act to enable standards to be set for premises and to regulate advertising by psychologists, although no standards have been prescribed.

In relation to paragraph (c), orders are made by the Board when satisfied the subject matter of a complaint is proved following a hearing. These may include orders that:

- (i) a practitioner seek medical or psychiatric treatment;
- (ii) a practitioner complete such educational courses;
- (iii) the psychologist report on his or her psychology practice ; or
- (iv) the practitioner pay a fine.

The Act also enables the Board to develop a code of professional conduct. Registered psychologists are not required by the Act to comply with the Code, however, a breach of the Code may result in a complaint being made to the Board where it otherwise falls within the grounds of complaint outlined above, in particular the ground of 'professional misconduct'. Such a complaint would need to be sufficiently serious before a penalty could be imposed at a disciplinary hearing.

Disciplinary Processes

The Psychologists Act 1989 enables complaints to be made to the Board as outlined above. In accordance with the provisions of the Health Care Complaints Act 1993 (HCC Act), a complaint may also be made to the Health Care Complaints Commission. Processes are put in place to ensure that complaints are handled in a co-ordinated manner.

In the first instance, complaints made to one body are referred to the other. Action on a complaint is then determined through consultation between the Board and the HCCC. Matters can be referred for conciliation by the Health Conciliation Registry, referred for investigation to the HCCC or dismissed. Where there is disagreement between the HCCC and Board as to what action should be taken on a complaint, the view of the body that takes the most serious view of the matter will prevail.

Following an investigation, the HCCC can make a recommendation that disciplinary action be taken. The Board can then decide to set the matter down for an inquiry. Such an inquiry or "disciplinary hearing" is conducted either by the Board or a professional standards committee (PSC) constituted under the Act.² The Board or PSC can inform itself of any matter as it sees fit, and the psychologist concerned is entitled to be heard and represented by legal representation. The Board or PSC can summons witnesses, take evidence and obtain documents. Neither body is bound by the rules of evidence.

A wide range of penalties, including deregistration, suspension, counselling, continuing education or a

² Professional Standards Committees consist of two registered psychologists and one lay person. The lay position is often filled by a person with legal experience.

fine, can be imposed by the Board if it is satisfied a complaint is proved after a hearing by a Board or PSC. The PSC cannot impose a penalty but may make a recommendation to the Board that such a penalty be imposed following an inquiry.

2.3 Other Legislation

The provision of psychological services is also regulated through general consumer protection laws such as the Commonwealth *Trade Practices Act 1974*, administered by the Australian Competition and Consumer Commission and the NSW *Fair Trading Act 1987* administered by the NSW Department of Fair Trading. These prohibit psychologists from making false and misleading representations in the course of providing a service, for example, falsely claiming to hold qualifications in psychology or membership of professional associations.

In the case of a dispute between a health professional and a consumer, either party could seek to resolve their differences through the civil court system, although it is recognised that this is generally an expensive process and is unsuitable for minor complaints. As an alternative such matters can also be heard before a Consumer Claims Tribunal which has the objective of providing a simple low cost mechanism for dispute resolution. Complaints about fees may also be pursued before the Tribunal.

2.4 The Role of Professional Associations

In addition to the registration board, professional associations play a role in monitoring standards among psychologists. The largest professional association is the APS. The organisation was formed in 1966 to represent the interests of psychologists. The APS sets standards for membership and requires members to observe a Code of Ethics as a condition of membership. Based on APS membership figures, approximately 54% of the registered psychologists in NSW are also members of the APS.

There are a number of smaller professional associations, colleges and similar organisations with varying roles in representing the profession and monitoring professional standards.

2.5 Other Service Providers

There are a number of health professionals or para-professionals that provide some (or all) of the services that are ordinarily provided by psychologists as noted above. This includes: medical practitioners (including both specialist psychiatrists and general practitioners), counsellors, psychotherapists, psychoanalysts, social workers and mental health nurses.

Only medical practitioners and nurses have statutory registration boards similar to that established for the psychology profession. The Australian Association of Social Workers plays a role in accrediting social workers and provides ongoing monitoring of professional standards. All persons providing health services, whether registered or not, are subject to the Health Care Complaints Act 1993 and the other consumer protection legislation outlined above.

2.6 The Regulation of Psychology in Other Jurisdictions

Psychologists are registered in all Australian jurisdictions and New Zealand. NSW was the last jurisdiction in Australia to introduce a statutory registration scheme. While all jurisdictions provide for the establishment of a registration board and academic requirements for registration are broadly similar, different arrangements apply for the disciplining of members and the handling of complaints. While NSW only restricts the use of the title of psychologist, some jurisdictions prohibit specific

practices from being carried out by persons other than a registered psychologist. Some states specifically prohibit ‘the practice of psychology’ by unregistered persons. A summary of the main features of legislation regulating psychology in other jurisdictions is provided at *Appendix D*.

2.7 Impact of the Legislation on Competition

Legislative controls imposed by Government often have positive outcomes for the community where they effectively address problems that arise from the provision of services in an unregulated environment. These are sometimes known as ‘market failures’. An example of such a problem is where there is an imbalance of information between service providers and consumers, limiting the ability of the latter to make informed choices when seeking service providers. However, regulation may also restrict competition among service providers. This may result in new problems or costs for business, consumers and government which are not justified having regard to the nature of the problem which the intervention was seeking to address. Alternatively, regulation may not be effective in addressing the identified problems at all.

The principle requirements of the Act which may have an impact on competition can be summarised as follows.

- The restriction on the use of the title “psychologist” by unregistered persons may confer a competitive advantage on psychologists over other service providers, although this could be outweighed by the benefits to consumers of being able to identify competent and ethical service providers.
- The requirements for registration may restrict competition where the number of persons that may gain registration (and hence the right to use the title “psychologist”) is limited beyond that which is necessary to ensure that the objectives of the Act can be achieved. Unjustified limitations on the number of practitioners, whether effected by requirements for academic qualifications and supervised practice or the imposition of specific requirements such as character, may result in a lessening of competition. Similarly, the power to impose conditions on registration can, in certain cases, limit competition.
- Regulation of conduct through the *Code of Ethical Conduct*, the complaints and disciplinary system, or statutory restrictions on conduct although generally directed at ensuring high standards are adopted by practitioners, may inappropriately focus on the commercial conduct of psychologists thus limiting information to consumers on the different services available.

The principle guiding this review in assessing the restrictions outlined above is whether the costs arising from the restrictions are outweighed by the benefits, and that the objective of the legislation, as canvassed in Chapter 3 can only be met by restricting competition. A range of new regulatory requirements were canvassed in the Issues Paper and these are also assessed to ensure that they accord with the review principle.

3. THE OBJECTIVES OF LEGISLATION REGULATING PSYCHOLOGY

3.1 Objectives of the Current Act

To comply with the COAG Competition Principles Agreement, the NSW Government is required to identify the objectives of the *Psychologists Act 1989* and to consider whether these objectives are best achieved by restricting competition. The long title of the Psychologists Act 1989 outlines the purpose of the Act:

“An Act to make provision for the registration of psychologists, to regulate the qualifications for and the effect of such registration, to constitute the Psychologists Registration Board and to specify its functions, and for related purposes.”

There is, however, no clear statement of the objectives of the legislation contained in the Act itself. In introducing the legislation in 1989, the then Minister stated:

“It will protect the public by setting standards of training and competency; provide a means of identifying practitioners; provide a means of dealing with charges of misconduct; control advertising; protect NSW from deregistered practitioners from other states; and prevent charlatans from advertising training courses in psychology.... This Government believes it is in the public interest to legislate. As Waterhouse argued: “...those in psychological stress are often least able to make balanced judgements. Registration would provide some protection since the public would be able to identify persons with approved psychological qualifications and experience”³.

3.2 Original Rationale for the Objectives of the Act

The problem that the legislation seeks to address is the potential risk of harm from unqualified, unscrupulous or sub-standard operators in the market for psychological services. In other words, the primary objective of the legislation at the time it was introduced is to minimise risks to public health and safety because the Act recognises those in the market need assistance to identify registered practitioners because they lack the specialised knowledge and ability to make such a judgement themselves.

The rationale which underpinned the *Psychologists Act 1989* when it was introduced was a lack of information in the market which exposed consumers to psychological and sometimes physical harm. Harm could result because inadequate or inappropriate treatment might be provided, or treatment might be delayed. The Act was introduced in 1989 after a number of reports in the 1970s and 1980s raised concerns regarding practitioners offering services to consumers who claimed to be psychologists. Further there are a number of closely related service providers in the market, such as psychotherapists, counsellors, and social workers, which can be confusing for consumers. Consumers were unable to identify when professionals had appropriate qualifications to provide psychological services and whether professionals continued to be of a standard to provide such services. In many instances the qualifications were either non-existent or of dubious educational merit. In this regard, an APS survey at the time the Act was introduced found that only 34% of those listed in the telephone directory held qualifications acceptable to the APS.⁴

³ The Hon P E J Collins, MP, Legislative Assembly Hansard 19 April 1989 at p.679L.

⁴ Legislative Assembly Hansard, 2 May 1989 at 788.

The Department conducted limited research at the time of preparing the Issues Paper on whether the situation prior to the introduction of the Act continued to exist. While various points were noted by the Department, and these are substantially outlined in section 3.4, submissions addressing whether there is a continuing rationale for intervention were sought.

3.3 Submissions

Submissions overwhelmingly supported the view that the objectives of the legislation are protection of public health and safety through the provision of information to patients. Professionals, their associations and consumers shared this view.

*“The Association submits that it is a primary purpose of the Registration Act to identify for the public those professionals who have qualifications and experience necessary to provide safe and effective psychological services... the Act should be able to protect the public from psychologists who are incompetent, despite being appropriately qualified and experienced and of good character”.*⁵

*“Given the nature of the services that psychologists provide and the potential for harm to patients from unethical or incompetent practitioners it is more important to foster public health and safety through legislation than to provide a totally unrestricted or more competitive market.”*⁶

*“From a consumer’s point of view, when a person is seeking professional assistance from health professionals there must be an adequate level of confidence in the professionals concerned...”*⁷

Submissions also highlighted a continued rationale for intervention, noting that since the Act was introduced, little has changed in regard to the number of closely aligned service providers and the availability of information. Many highlighted the risks to consumers from unregistered and registered persons.

*“We agree that consumers have been, and still are, at risk of potential harm from unqualified or inadequately qualified practitioners. Consumers in distress or despair are certainly in no position to make a considered judgement on the suitability of a helping professional.”*⁸

*“My reason for this stand relates to the vulnerability of people who are seeking psychologist’s help and the greater risk they run of not being helped or even worse, being further damaged by inappropriate or wrong psychological advice and treatment.”*⁹

⁵ Submission - Health Services Association

⁶ Submission - Health Care Complaints Commission

⁷ Submission - Wollongong Health Consumers Advisory Group

⁸ Submission - Australian Association of Social Workers Ltd (NSW Branch)

⁹ Chief Executive Officer of an Area Health Service, cited in Submission from the Health Services Association

“A recent study undertaken in this department found that patients, general practitioners (GPs) and the general public experience great difficulty in understanding the information currently provided by psychologists on their business cards and letterheads.”¹⁰

“Without being able to present quantitative evidence, the experience of one person closely associated with people with a mental illness ... is that the search for the treating professional is a long one; disappointments and moving on from one to another...”¹¹

“The Society supports the need for registration of psychologists as it has done in all States and Territories. Its files have numerous examples of cases where either non-trained individuals have held themselves out to be psychologists carrying out bizarre procedures and harming members of the public or, trained persons who have been disqualified for unprofessional conduct and removed from practice.”¹²

“I put to you that there was never any evidence that there was as much harm caused by unqualified or substandard people as that done by qualified registered practitioners.”¹³

3.4 Conclusions

Submissions support the view that the objective of the Act is the minimisation of the risks of harm for those using or seeking to use the services of a psychologist. It is argued that the rationale underpinning this objective is that in the absence of government intervention, consumers will have difficulty in identifying competent and ethical service providers, primarily because of the large number of practitioners providing the same or similar services. In short there is an imbalance of information which exposes consumers to harm.

Is there an imbalance of information?

Detailed information is not available to address this issue conclusively. Most submissions tended to provide anecdotal material highlighting the difficulties facing consumers in an unregulated market.

A recent study carried out by Macquarie University considered consumers', psychologists' and medical practitioners' understanding of qualifications to become a psychologist.¹⁴ This study, found that 93% of patients of general practitioners and 81% of psychologists' patients had difficulty in understanding the qualifications of psychologists. Approximately 82% of general practitioners reported similar difficulty. In contrast, very few respondents experienced any difficulty in understanding the degrees most commonly awarded to pharmacists, social workers, medical practitioners, engineers, nurses or dentists. Similar results were found in regard to consumers' understanding of professional affiliations, except with regard to the APS.

¹⁰ Submission - Psychology Department, Macquarie University

¹¹ Submission - Wollongong Health Consumers Advisory Group

¹² Submission - Australian Psychological Society (National Branch)

¹³ Submission - Psychologist

¹⁴ Franklin, I., Foreman, M., Kyriakou, A., and Sarnovski, J., (1998) *“Awareness of Psychologists' qualifications, professional associations and registration amongst general medical practitioners, psychologists aid their clients”*. Unpublished.

Whether this is likely to result in harm for consumers is difficult to determine in the absence of detailed material concerning the means by which consumers gain access to services - for example, do patients seek services directly from private practitioners or hospitals or is access mediated through referral. However the Macquarie University study highlights that even in cases where referral is sought through a general practitioner, the referring practitioner could have difficulty in identifying an appropriately qualified practitioner.

What are the risks of harm to consumers?

Submissions identified a range of potential risks to consumers, some of which had previously been identified in the Issues Paper. The 'harm' that is sought to be addressed is not limited to acts of registered or unregistered persons that injure a consumer, such as sexual misconduct, but includes the injury that may result if a consumer is unable to obtain the services they need, or is discouraged from seeking those services. These can be summarised as follows:

- The inability of consumers to identify competent service providers may result in a failure to detect chronic or service mental illness. If an incompetent practitioner is consulted in the first instance, appropriate treatment may be delayed or inappropriate treatment may be administered. Consumers may be discouraged from seeking services. Unmanaged or untreated mental illness can result in reduced health, well-being and social functioning and in some cases death.
- Services provided by some less competent practitioners for less serious complaints may not result in effective resolution of a clients problem, possibly prolonging stress for the client (and family), or limiting their capacity to function in employment or social situations.
- Consumers who require psychological assessments for the purposes of civil action to recover damages may lose compensation if an assessment is inadequate. Similarly, inappropriate jail terms could be imposed if an inadequate assessment is performed. Those who seek advice from practitioners on employment options may make ill-suited career choices.
- Inappropriate administration of psychological or psychometric tests could result in unnecessary treatments being administered. As documented in the Chelmsford Royal Commission, treatments with an extremely high level of risk can be administered on the basis of psychological tests.

There is no quantitative data available in regard to the risks of psychological practice from either before or after the Act was introduced in New South Wales. However, for one of the risks of psychological practice, sexual misconduct, a paper from the United States in 1995 suggests that up to 12% of therapists may have engaged in such conduct through their careers.¹⁵ The Department has not drawn any conclusion on whether this is at all comparable to the situation in Australia, although the number of complaints and matters dealt with in disciplinary proceedings is rather high.

The complaints history of the profession at the time the Issues Paper was prepared, in particular with regard to claims of sexual misconduct, provides some evidence that there are risks of harm to consumers from those qualified to practice as psychologists. Since the Issues Paper was prepared, the number of complaints has increased, with a number of practitioners being removed from the register (**Appendix E**). These have predominantly been in the area of sexual misconduct and the provision of inappropriate treatment.

¹⁵

Williams, M. (1992) "Exploitation and Inference: Mapping the Damage from Therapist-Patient Sexual Involvements", *American Psychologist* 47(3) at 412-421.

Commonwealth, State and Territory Health Ministers have identified mental health as a priority area for the establishment of national health goals and targets, because of the significant economic, social and personal costs of mental illness.¹⁶ The strategies for achieving these goals rely heavily on competent practitioners who are able to identify mental illness early. The Burdekin Inquiry into Mental Health highlighted the important role psychologists play in identifying individuals affected by mental illness.¹⁷

Do general consumer protection law and APS membership provide assistance to consumers?

There is significant doubt as to whether the prohibition on misleading and deceptive conduct contained in the *Trade Practices Act 1974 (Cth)* and the *Fair Trading Act (NSW)* provides sufficient protection to consumers. While a consumer could clearly seek redress where a practitioner falsely claimed to hold qualifications, the provisions are unlikely to be effective in situations where qualifications are held but are not of sufficient standard for the services the consumer is seeking.

While the *Health Care Complaints Act 1993* enables consumers to make a complaint about any health service provider, registered or not, little action can be taken where the person is not registered. While complaints could be referred to a professional association for action, this is likely to be ineffective in a number of cases given the low levels of membership of the main professional association, the APS, compared to the number of registered practitioners. The Department has estimated that only 54% of registered psychologists are members of the professional association. Further, many submissions from consumers argued that the APS was unwilling to deal with complaints and even where a complaint is properly dealt with there is a lack of appropriate sanctions.

The Department's Position

The Department is of the view that there is a continuing rationale for intervention to minimise the risks of harm or injury to consumers. However, the precise form of intervention, that is registration by title or alternative means, is considered in the next chapter. To ensure that the welfare of consumers is the paramount consideration in administering the legislation, it is proposed that the Act be amended to include a specific statement of its objectives

Recommendation 1

That legislation providing for the regulation of psychology include the following:

the objective of this Act is to provide adequate protection to consumers of psychologists' services from the risks of serious harm or injury by enabling them to make informed decisions regarding such services.

¹⁶ Commonwealth Department of Human Services and Health *Better Health Outcomes for Australians: National Goals Targets and Strategies for Better Health Outcomes into the Next Century* 1994 at p 250.

¹⁷ Human Rights and Equal Opportunity Commission *Human Rights and Mental Illness: Report of the National Inquiry into the Human Rights of People with Mental Illness Vol 1*.

4. THE REGISTRATION OF PSYCHOLOGISTS AND COMPETITION

4.1 Introduction

The primary form of intervention through which the Psychologists Act 1989 seeks to achieve the objectives outlined in the previous chapter is through the establishment of the registration system and the placement of restrictions on who may use the title 'psychologist'. The restriction aims to achieve the objectives of the legislation by providing consumers with a simple and understandable means of identifying practitioners capable of providing the full range of psychological services. As consumers can identify such practitioners, risks of 'injury' may be reduced along with costs to consumers of seeking qualified practitioners.

Although the Issues Paper noted that the prohibition on the use of the title psychologist by unregistered persons could have benefits for consumers, it was also noted that this may have disadvantages or costs, primarily through its impact on competition. A restriction on title may confer a 'competitive' advantage on registered psychologists over competitors because of a perception that psychologists are able to provide a superior service. This may result in unnecessary costs for consumers. Further, by restricting the number of practitioners who may be registered, competition among psychologists may be affected. If prices rise substantially, then consumers could be discouraged from using the services of psychologists.

This chapter will focus on the impact of the restriction on the use of the title psychologist, (the principle feature of the Act), and whether this form of intervention is necessary to achieve the objectives of the Act. Alternatives to these requirements are considered to determine whether they can achieve the objectives of the legislation, with less cost or adverse impacts on competition.

4.2 Submissions

Submissions were sought in regard to the effectiveness of the current Act, the costs and benefits of the current system and whether the objectives of the legislation could be achieved by other means. The majority of submissions supported the continuation of restrictions on the use of the title. Many submissions argued that the key elements of the current system have had positive effects.

“The overall effect of registration of psychologists has been to raise the standard of training of psychologists, and for that reason it should be continued.”¹⁸

“The registration process provides the necessary basic information about the psychologists competency as a critical guide to any consumer and to any health professional who is assisting a consumer to locate an appropriate service provider.....”¹⁹

“At the outset it should be stated that registration has already had positive effects and should continue.... The impartial disciplinary process has resulted in the de-registration of a number of persons, whose employing agencies formerly appeared to have lacked the ability to discipline them.”²⁰

¹⁸ Submission - College of Psychological Practice

¹⁹ Submission - Australian Association of Social Workers (NSW)

²⁰ Submission - Northern Sydney Area Health Service

Many noted that the Act is effective in providing assurances and guidance to consumers, particularly those affected by mental illness or intellectual disability, noting that prior to registration consumers had no information to assist them to identify qualified practitioners. A title such as “registered psychologist” provides a simple means of interpreting information which is otherwise confusing.

“The words “Registered Psychologist” can give the consumer an assurance that the many meaningless abbreviations of qualifications (meaningless to most consumers) are relevant to the psychologist’s functions and so by giving the psychologist a stamp of approval from an independent authority, can give the prospective consumers an assurance of the credentials of the holder of the title.”²¹

“At the moment anyone who consults a person who calls themselves a psychologist knows that there is a considerable degree of protection... A well trained psychologist can be much more effective and thus reduce the incidence, length and severity of mental and behavioural problems.”²²

“Registration at present indicates that a psychologist or medical practitioner has passed the necessary basic academic course. We do not see any reason to change this.”²³

Registration has given the general public and consumers of psychological services effective guidance as to the basic qualifications acceptable for professional practice²⁴

However, some consumers argued that the Act had not been effective in meeting its objectives. One argued that this was a result of an inherent problem with the Act:

“As noted elsewhere, many consumers remain to be convinced as to the positive value (if any) of registration... Victims would prefer new machinery linking disciplinary action directly to rapid financial redress for victims who have suffered loss.”²⁵

This submission argued for a professional conduct division to be established within the Supreme Court as recommended by the Royal Commission into Deep Sleep Therapy, and the abolition of registration Boards. The option of a ‘generic’ registration board was also canvassed.

A limited number of submissions suggested that the failure of the Act to meet its objectives was a consequence of the Board’s failure to administer the Act appropriately. The role of the Board was extensively considered by the Ombudsman in 1995 who, in a subsequent annual report indicated she was satisfied the Board had changed its practices sufficiently to address concerns.

A limited number of submissions addressed directly the practical impact of the current legislation on competition and potential regulatory costs. Those submissions argued the following:

²¹ Submission - Member Wollongong Health Consumer Advisory Group

²² Submission - School of Behavioural Sciences, Macquarie University

²³ Submission - Chelmsford Victims Action Group

²⁴ Submission - NSW Association for Mental Health

²⁵ Submission - Medical Consumers Association

- ▶ A lack of competition, if any, is more than adequately compensated for by assurances that practitioners are competent. Some submissions suggested that the benefits of the Act far outweigh any competitive market considerations and it is more appropriate to provide for health and safety than to provide a totally unrestricted or more competitive market.
- ▶ Many submissions emphasised that because the Act only restricts use of the title ‘psychologist’, counsellors, psychotherapists and other allied health professionals may continue to practise. This results in significant and substantial price competition, with one practitioner arguing that there is no evidence to suggest that prices had risen since the Act was introduced. Most agreed that competition is strongest among those psychologists providing counselling and minor therapy.

However, a number of submissions from unregistered professional groups argued that the Act conferred a competitive advantage on psychologists. It was argued that it is unfair to confer such an advantage given other groups provide similar services. The argument put forward in submissions rebutting this view was that the unregistered groups are not trained to provide all of the services that psychologists are able to provide and therefore are not truly in competition.

4.3 Options for Government intervention to achieve the objectives

In view of the submissions received concerning the advantages and disadvantages of the current Act and the impact on competition, the Department has given further consideration to the issue of whether the current arrangements produce the greatest overall benefit for the community, and are the most effective means for achieving the objectives of the Act. Alternatives that limit the impact on competition have been identified. Although some submissions suggested other professional groups should be registered to minimise any unfair competitive advantage conferred on psychologists, it is not the purpose of this review to consider such calls for registration. Each profession’s claim for registration needs to be considered having regard to the risks of practice, and the benefits of registration.

However, underlying these submissions is a view that alternative service providers provide the same or similar services to psychologists. Submissions from psychologists argued that this is not the case as psychologists provide a broader range of services with more significant risks. A study prepared for the British National Health Service by the Management Advisory Service concludes that although there are significant areas of practice that do not require the same level of training and experience as that provided to psychologists, only professional psychologists are capable of consistently utilising skills which require intensive and extensive training not available to other practitioners. Some submissions from psychologists made a similar point, also noting that the risks of significant harm from inappropriate treatment are most apparent where practitioners deal with the assessment of intellectual disability and the diagnosis and management of chronic or severe mental illness.

This particular issue has been considered in developing the options for consideration. The following options have been identified for assessment.

Option 1 - Title restriction and registration of psychologists

For the purposes of this analysis, the current system outlined in paragraphs 4.1 and 4.2 is **Option 1**.

Option 2 - Information Strategies

Rather than providing for the registration of psychologists by title, an alternative approach could be to provide information directly to consumers of psychological services to assist them in identifying competent and ethical service providers. For example, a government authority could provide information and advice to consumers and referring practitioners, through direct contact or advertising campaigns, on qualifications necessary for safe practice. Advice might also be provided on professional associations that discipline their members.

Option 3 - Certification of psychologists on a voluntary basis by a Government authority or registration board

This system is similar to *option 1* in that practitioners would be certified by a Government body or statutory registration board. Practitioners would be required to meet certain registration requirements and a disciplinary system would operate to ensure standards of those accredited would be monitored. There would be no restriction on who may use the title psychologist, although those who seek accreditation could advertise that they have such accreditation. A person that falsely claimed to hold such accreditation could be prosecuted for misleading and deceptive conduct under the *Fair Trading Act* or *Commonwealth Trade Practices Act*.

Option 4 - Voluntary accreditation of professionals providing psychology type services carrying risks of injury

The option would involve the following.

- ▶ An authority would be established to accredit professionals that propose to provide certain services where there is an identified and significant risk of injury. Accreditation would be competency based with ongoing monitoring.
- ▶ There would be no restriction on title although professionals would be able to advertise that they have accreditation to engage in the provision of services or the treatment of conditions that carry a significant risk of injury for example, diagnosis and treatment of chronic mental illness.

While it is not the purpose of this review to consider claims for registration by other health professionals, such a system would be 'generic' in the sense that other professionals could be accredited where they demonstrate they are competent to provide the services that involve a significant risk of injury. Professional associations would self-regulate the conduct of non-accredited service providers who provide the less risky services, while the Health Care Complaints Commission could continue to receive complaints.

4.4 Assessment of options for government intervention

In assessing the four options, *option one* has been used as a benchmark against which other options are compared. However, it should be noted that it is not possible to quantify the benefits or costs of any of the options, including the current system due to a lack of comparative data.

However, in relation to the benefits of the options, material is available concerning the benefits of psychological treatment or intervention. A study prepared for the APS in 1992 titled *The Economic and Social Value of Psychology in Australia* highlights the benefits of early intervention by

psychologists in providing assessment and treatment.²⁶ The following research was noted in the study.

- ▶ A pilot project involving psycho-social assessment of stress related compensation claimants found that the engagement of psychologists to provide treatment or assessment resulted in a 50% reduction in the time taken to make decisions on claims, and a 35% decline in the cost of individual stress claims.
- ▶ Studies in the banking sector have shown that early intervention by psychologists has resulted in a 60% decrease in sick leave and a corresponding fall in compensation claims in cases involving bank hold-ups.

The Department is of the view that substantial benefits could possibly arise where risks are averted. As a consequence, in carrying out a comparative assessment of the options, it is likely that the option which has the highest overall benefits or advantages for the community will be the one which most effectively and simply provides information to consumers to assist them in using the service of a qualified practitioner. The effectiveness of the system in providing this information can then be compared to the costs of the system, in particular the anticipated impact on competition.

Option 1 - Title restriction and registration of psychologists

The *disadvantages* or costs of the current system have been identified as follows

- ▶ *The costs of administering the legislation*

The administrative costs of the Board of approximately \$400 000 are recovered through registration fees. A proportion of the costs of administering the Health Care Complaints Commission also need to be considered, although they cannot be calculated with precision as the Commission has jurisdiction to investigate providers of psychological services whether registered or not.

- ▶ *The increased costs of training*

Many practitioners, in an unregulated environment, may seek the same level of training as that required under the Act. However, if the Act were not in place, three-year graduates could possibly use the title “psychologist” and provide services under that title. They would not therefore incur the cost of the additional fourth year to contain conditional registration or two years supervised practice.

Although these practitioners can continue to provide services under the Act, the introduction of the restriction on title may lead to an increase in demand for education because practitioners seek to upgrade their qualifications, even though they may not provide services for which such a level of training is necessary. While this is a disadvantage or cost of the Act, the actual impact cannot be measured with any degree of certainty because it is unclear what proportion of graduates would seek the additional education, or complete supervised practice, purely as a result of the Act.

- ▶ *Disadvantages or costs of restricting competition resulting in higher prices for consumers*

It is often argued that even where entry criteria are reasonable, registration of itself enables registered

practitioners to attach a premium to their services resulting in higher prices for consumers. The presence of such a premium for any profession, including psychology, would imply the presence of an additional cost to society from registration. If such a 'premium' for psychologists were to arise this may discourage consumers from seeking services from a registered professional.

Isolating a premium for any profession is complicated. The absence of comprehensive data on actual fees (as opposed to recommended APS fees), the limited availability of details of the average number of services performed, differences in the type of services provided across psychology and the lack of comparative data for other therapies make it difficult to isolate any premium. Moreover, even if a price premium were observed, it is not clear that this can be directly attributed to registration, even where registration has served to elevate the public perception of the standard of services on offer.

While it is possible that a small premium is likely to arise, no evidence has been presented suggesting that consumers have been discouraged from seeing a psychologist. On the contrary, submissions pointed out there is a high degree of competition because consumers can still choose between psychologists and other practitioners.

The *advantages* or benefits of the current Act were identified in submissions as follows:

- ▶ greater use of appropriate health service providers by consumers reducing the social costs of mental illness to both the community and the health system;
- ▶ monitoring of standards among the profession resulting in reduced injury;
- ▶ reduced transaction costs for consumers and other users of such services in identifying registered psychologists and settling disputes with professionals.

As noted above, these benefits could arise for the other options under consideration if they are effective in achieving the objectives of the Act. However, submissions attached a high degree of value to the title restriction, arguing it provides a simple and cost effective means of identifying practitioners, thus reducing risks of harm. Submissions noted that the Act had resulted in reduced costs to consumers in determining whether a person is qualified and competent; reduced recruitment costs and fewer practical difficulties for employers; and reduced costs for the health system through reductions in the length of stay, incidence and severity of mental illness because appropriate practitioners could be identified. Reduced risk of harm to patients, their families and the community were also identified as benefits.

Although, there are no systematic studies on injury rates (and subsequent costs arising from injury) from either before or after the Act was introduced which can be used to quantify the benefits likely to result from registration, it is likely that option one will produce an overall benefit to the community because it provides simple information to consumers about the competence at entry level and ethical standards of those holding themselves out as psychologists. Increased complaints and disciplinary action in recent years suggests the Act is having a positive effect in regulating psychologists. As titles legislation, other service providers continue to operate in competition with psychologists, minimising the costs for consumers.

▶ *Option 2 - Information Strategies*

Removal of registration of the profession would eliminate any impact on competition. However, this would reduce the amount of information available to consumers resulting in an increased risk of harm and costs to consumers. Option 2 provides an alternative means of addressing the imbalance of information.

The provision of information regarding qualifications could assist consumers in identifying practitioners with minimal competence to provide services. However, such a system would have *disadvantages* or costs, as outlined below:

- ▶ While there would be no cost associated with a registration board, costs would be incurred through the assessment of qualifications and the provision of information to consumers. If an active advertising campaign is undertaken to promote the system or provide information to consumers, it is likely that those costs would exceed substantially the administrative costs incurred under the current system.
- ▶ In the absence of an active advertising campaign, consumers would incur costs in contacting the information service to determine whether practitioners hold entry qualifications.
- ▶ The costs of education are difficult to determine. Although it is unlikely the same degree of costs would be incurred as under option one, the system could result in an increase in demand for education as practitioners seek to gain the ‘advertised’ qualifications.
- ▶ While it is not possible to make a definitive comparison, the potential for a price premium to arise would be reduced as any person could use the title psychologist. However, those that hold the recognised qualifications could still obtain a competitive advantage. As for option one this will be minimised, however, by the presence of alternate service providers.

On balance, it is likely that the administrative costs for Government and transaction costs for consumers would be higher under such a system. However, training costs would be lower as would the potential for any competitive advantage to be conferred on consumers.

Realisation of the *benefits* of this system are, however, highly dependent on the ability of the Government to provide information that can be easily understood by consumers. The Macquarie study referred to at 3.4 regarding consumers understanding of qualifications suggests such a system may be problematic in view of a lack of understanding of consumers and referring practitioners, particularly as there are over two hundred and fifty recognised qualifications.²⁷ Consumers would also need to take an active role in seeking out such information to make it effective, otherwise substantial advertising and promotion costs would be incurred by Government. The Department is of the view that the benefits of a system that provides information regarding qualifications alone are likely to be substantially lower than option one.

Further, such a system fails to acknowledge the risks to consumers from ‘qualified’ practitioners that fail to maintain their skills overtime or engage in inappropriate conduct. The material concerning the level of sexual misconduct and the complaints history of the profession itself suggest a need for ongoing monitoring. While advice could be provided recommending consumers deal with members of certain professional associations, such an arrangement would have higher costs for government as such associations would need to be audited. Practitioners would also incur the costs of joining the recommended associations. Further, many associations have higher entry requirements than those under the current system thus increasing training costs and the level of restrictions on competition.

Although the Health Care Complaints Commission can continue to receive complaints about practitioners under this option, the Commission’s role is limited to investigating the complaints or referring them for conciliation. It cannot make findings as to whether a complaint is proved, although under Option 2 it could refer the matter to a professional association for action. While an increased

²⁷ Op cit at footnote 5.

number of practitioners would join professional associations, it should be noted that the current levels of membership by registered persons is about 54%. A substantial number of those practitioners holding themselves out as competent may not be subject to ongoing monitoring. On balance, therefore, the Department concludes that this option is unlikely to deliver substantial benefits to the community as occurs under option one. Further, to ensure that it achieves the objectives outlined in Chapter 3, substantially higher costs would be incurred by Government without necessarily producing a more competitive market, because of the more restrictive entry requirements of professional associations.

Option 3 - Certification of psychologists on a voluntary basis by a Government authority or registration board

As mentioned previously, this system would be broadly similar to the current system except there would be no restriction on title. The following points should be noted.

- ▶ Administrative costs would be marginally lower than under the current system because it would not be necessary to monitor a restriction on title.
- ▶ Training costs and the potential for a competitive advantage are likely to be comparable to the current system. Similar incentives would apply to 'up-skill' to meet the accreditation standard with practitioners incurring costs of supervised practice. While no premium would attach to the title "psychologist", the ability to promote oneself as 'accredited' is likely to be seen as desirable and hence attract a similar premium to that which exists under the current Act. As all practitioners that are registered under the current system could obtain accreditation under Option 3, the lessening of the impact on competition is likely to be marginal.
- ▶ The potential exists for confusion among consumers. To address this problem, an information campaign would be required to promote the benefits of dealing with an 'accredited psychologist' as opposed to a non-accredited provider. Given that those requiring accredited services are likely to be in distress, it is questionable whether such a distinction, whether promoted or not would have any benefit.

The Department is of the view that such a system would have a comparable impact on competition to option 1, however, it would not be as effective in meeting the objectives of the current legislation unless substantial costs were incurred to promote the benefits of dealing with an accredited practitioner.

Option 4 - Voluntary accreditation of professionals providing psychology type services carrying risks of injury

The system was described in detail in paragraph 4.4. The *advantages* of this system would be as follows.

- ▶ Consumers and referring practitioners who require services which carry a significant risk of injury would be able to make informed decisions about their treatment needs.
- ▶ Psychologists that do not provide services that carry significant risks would not be required to be registered. Those practitioners, (particularly those not working in health related fields), who do not propose to engage in the practices involving significant risk would have a choice as to whether to incur the additional costs associated with training required for registration which they currently bear.
- ▶ Practitioners providing the same services would compete equally minimising the potential for any price premiums

The *disadvantages* or costs of such a system would be as follows.

- ▶ Notwithstanding the risks are not significant, there would be less information available for consumers seeking services for which accreditation is not available.
- ▶
- ▶ The Government would incur costs in establishing the accreditation authority.

The potential advantage of this system is in its reduced impact on competition. The potential for non-accredited psychologists (that is those who do not provide services for which accreditation can be granted) to obtain a competitive advantage over other competing service providers providing similar services is, theoretically, reduced. However, it is likely that most practitioners who are registered under the current system could still gain accreditation and advertise as such, even where they are not providing services for which accreditation is necessary. The competitive nature of this system would be undermined. Indeed accreditation to engage in the high risk practices could itself attract a premium and be viewed by consumers as desirable, even where they do not require treatment for services.

Similarly, although registration fees would be less than those accruing under a system that focuses on all members of a profession, many psychologists who are registered under the current system would be in a position to seek accreditation because their training may provide them with sufficient competency to treat more complex cases, notwithstanding many would not always be engaged in providing services that carry risks on a regular basis. As a consequence, training costs are unlikely to be substantially less than under the current system.

The *effectiveness* of this system is dependent on whether consumers are, prior to seeking treatment, aware of the nature of their condition and the type of treatment required. Given that many will not be in a position to make an informed decision about their treatment needs and hence assess whether to attend an accredited practitioner, the potential benefits would probably be less than under a system that is profession or title focussed.

Again, the Health Care Complaints Commission could receive complaints about those that do not hold accreditation. However, it is limited to investigating complaints and cannot make findings on such matters. While matters can be referred to a professional association, the low levels of professional association membership suggest there are likely to be a number of practitioners whose ongoing competence and conduct remains unmonitored.

There are also problems in determining which practices carry risks. One of the risks of psychological practice is that of sexual misconduct. A paper from the United States in 1995 suggests that 1-12% of therapists may have engaged in such conduct through their careers.²⁸ The Department has not drawn any conclusion on whether this is at all comparable to the situation in Australia, although it is important to note that this risk exists where there is direct client contact, regardless of the service or treatment provided.

While the proposal has significant merit, it is unlikely to address the objectives of the legislation more than the current system, or substantially lessen the impact on competition while achieving the objectives of the Act.

Recommendation 2

That psychologists continue to be registered by title .

5. THE NEED FOR FURTHER RESTRICTIONS

5.1 Introduction

A number of submissions to the review argued for the introduction of further restrictions on unregistered practitioners and psychologists where they are providing psychology type services. The submissions argued that the current Act is inadequate in protecting consumers from harm. In particular, a number of submissions argued that use of the titles ‘psychotherapist’ or ‘counsellor’ should be restricted to registered psychologists.

In addition, the Issues Paper sought submissions on:

- ▶ the need for practice restrictions;
- ▶ the desirability of specialist registration; and
- ▶ the need for additional regulation of psychological tests.

5.2 Restriction of additional titles

Some submissions argued that the Act fails to meet its objectives because other unregistered practitioners are able to hold themselves out to the public as counsellors or psychotherapists. These submissions argued that consumers are exposed to harm because they mistakenly believe that such practitioners are competent and qualified psychologists. For example:

“The Board should extend registration restrictions to cognate terms such as “psychotherapist” or “counsellor” which are equivalent in the public perception (and a refuge for many deregistered practitioners)”²⁹

However a significant number of submissions opposed such a move on the basis that there are many other health professionals who are able to provide counselling services or psychotherapy. In particular, it is argued that many psychotherapists are in fact drawn from a variety of backgrounds, eg social work, medicine and counselling, and are highly trained, and therefore it is inappropriate to grant psychologists a monopoly on these titles. Many identified an alternative course of action.

Rather than restrict the terms to the profession of psychology, the AASW argues that all professions that provide assessment, counselling and psychotherapy should be held accountable and registered.³⁰

Submissions calling for the restriction of additional titles such as counselling or psychotherapy have been noted by the Department. However, very little material was provided demonstrating the risks of injury to patients from counsellors or psychotherapists. The benefits of such a restriction are likely to be marginal. Prescribing additional titles such as counsellor or psychotherapist under the Act for exclusive use by psychologists is likely to significantly increase any competitive advantage which exists under the current Act for psychologists. Non-psychology trained practitioners would not be

²⁹ Submission - Psychologist, Central Sydney Area Health Service

³⁰ Submission - Australian Association of Social Workers (NSW)

able to use the titles unless they undertook additional training in psychology to become registered, notwithstanding that their current training may be adequate for the services that they offer. Alternatives, such as information campaigns that highlight the benefits of dealing with registered practitioners are likely to be far more effective. Therefore, the Department rejects the need for restrictions on additional titles.

5.3 Specialist Registration

A substantial number of submissions argued that registration of psychologists alone was insufficient to meet the objectives of the legislation. Such submissions sought to draw on recommendations made by the Royal Commission into Deep Sleep Therapy which argued there is a need to introduce specialist registration for the clinical specialty to ensure that the public is adequately protected from the risks of harm and injury.

“Without formal recognition of the specialist fields, there is a risk that the public can become exposed to less competent practitioners.”³¹

“We believe, along with all other responsible bodies of psychologists in Australia, that there is now an overwhelming case for limited specialist registration, particularly for clinical psychologists. The case currently rests on the striking difference in competence between a clinical psychologist with an accepted post-graduate qualification and any four year trained psychologist.”³²

Some submissions provided a different rationale for specialist registration arguing that consumers currently are unable to choose a practitioner appropriate for their needs because they lack specialist knowledge.

“The costs to consumers of inadequate qualifications can be considerable. Registration of specialist qualifications allows consumers, employers and those making referrals to assess practitioners who can meet their needs appropriately”³³

“It is clear that the public having knowledge of a practitioner’s area of specialist knowledge and skill enhances its ability to make an informed choice of practitioner....”³⁴

A number of submissions, from both consumers and professionals, did not support specialist registration noting such a system could potentially have an adverse impact on consumers.

“...given such factors specialist level psychological registration cannot have any real meaning or value for medical consumers. A rubber stamp of academic qualifications is still just a rubber stamp. The same public good can be achieved without any registration at all. All that is needed is a list of the relative merits of the various university and other qualifications obtainable in psychology.”³⁵

³¹ Submission - New Children's Hospital

³² Submission - College of Clinical Psychologists, APS

³³ Submission - Clinical Psychologist, Western Sydney Area Health Service

³⁴ Submission - School of Psychology, Macquarie University

³⁵ Submission - Medical Consumers Association

“I can not see that it serves any commercial purpose for me or provides any benefit to the consumer above and beyond that of registration as a psychologist”³⁶

“There is potential for abuse where a small group of elected ‘specialties’ may seek to control entry standards to their sub-specialty.”³⁷

Although descriptive titles of the purposes of informing consumers what type of psychology the psychologist does, may serve a useful purpose, there is no consumer driven need for specialist titles.³⁸

“Certification in specific areas of practice is a far better guide for consumers than mere registration or specialist registration.”³⁹

An Advisory Committee of the Psychologists Registration Board has prepared a report on the introduction of specialist registration. The Committee argued the following:

Unfortunately, there is now a perception by the general public that in order to become registered as a psychologist in NSW, one must have the necessary competencies to practise in the field of mental illness. This is not the case despite the considered opinions of Justice Slattery who presided over the Royal Commission into Deep Sleep Therapy..... The Public have the right to be able to identify those registered psychologists who have demonstrated that they possess the appropriate knowledge and skills to engage in clinical practice.⁴⁰

The Advisory Committee concluded that the risks to public health and safety could be adequately addressed through restrictions on the use of the titles “clinical-psychologist and neuro-psychologist”. It is recognised that the treatment of more complex cases carries the risk of greater injury, as evidenced in the MAS Report referred to at paragraph 4.4. However, there is little evidence to suggest that consumers are currently exposed to risks of injury from four-year trained graduates as suggested in submissions. While the current training requirements may not provide sufficient competence to treat all conditions, such practitioners have an obligation to refer patients on if they cannot treat. Of the nine complaints that have resulted in disciplinary action, two have raised issues of impairment, six have related to sexual misconduct and one has involved fraud in the preparation of a report. No matters involved practitioners providing treatment or services beyond their competence.

In regard to the second argument advanced, that is the need to provide further information to consumers, it has not been clearly established that non-legislative alternatives fail to provide this information effectively. In this regard, it should be noted that the medical profession independently operates a well recognised specialist accreditation system through professional colleges without legislative backing in the Medical Practice Act 1992.

³⁶ Submission - College of Psychological Practice

³⁷ Submission - Psychologist, Northern Sydney Area Health Service

³⁸ Submission - Practising Psychologist

³⁹ Submission - Chelmsford Victims Action Group

⁴⁰ Submission - Psychologists Registration Board

While there may be reduced costs for consumers in seeking out specialist services, the precise size of these savings is dependent on whether consumers are likely to understand both their treatment needs and the type of specialist practitioner required. Again this additional training cost would be incurred by those seeking specialist registration and there is the potential for a price premium to arise if it creates an expectation among consumers that specialist registrants are able to provide superior services for all patients. Patients may be misled into more expensive care that they do not require because the title of specialist may appeal as a signal of better quality.

On balance, it is not considered necessary for specialist registration to be provided through legislation. It is unlikely that legislative intervention would provide greater benefits than the current APS system without unnecessarily restricting competition.

5.4 Restrictions on the Practice of Psychology

Many submissions argued that the Act is inadequate because unregistered persons can continue to provide services provided by psychologists. Such submissions sought to argue that there are significant risks associated with the practice of psychology, and it is inappropriate to allow unregistered persons to engage in the provision of such services. While some argued for an absolute practice restriction, others simply supported restrictions on certain ‘core practices’.

Some aspects of psychological practice such as cognitive/neuro-psychological assessment and some personality assessment require a theoretical background as well as practical skills In order to protect the public from unskilled or inadequately skilled practitioners it may be worthwhile to consider restricting to registered psychologists certain practices where it is apparent that extensive education and practice are required and/or where the practice needs to be undertaken within a comprehensive psychological program.⁴¹

However, a substantial number of submissions expressed a contrary view.

There is much debate about the relative competence of health care providers in delivering psychological services. It is certainly not clear-cut that the public would benefit from any restriction on the services provided by those other than psychologists.... any restriction placed in these other groups would inhibit competition in the marketplace, and push up costs of services to consumers, restrict consumers in their choice of providers and possibly reduce the quality of service provision in the longer term.⁴²

It would be too difficult to restrict the practice of psychology to registered psychologists....⁴³

The justification for introducing practice restrictions in any context is that some practices are so inherently dangerous to patients that they should only be practised by trained professionals. Although some anecdotal reports were provided to the Review suggesting such practices existed, no solid evidence has been provided to suggest that there are widespread and frequent risks that are not being minimised through the current restrictions on title.

⁴¹ Submission - Health Services Association

⁴² Submission - Australian College of Applied Psychology

⁴³ Submission - Psychologist, Central Sydney Areas Health Service

The Waterhouse report in the 1970s found that practice restriction would be extremely difficult to implement because of the closely related practice of other professionals.⁴⁴

The costs of such a system in comparison to the current title registration system are likely to be high. Where one professional group is granted a monopoly on the provision of certain services it increases the potential for premiums or increased costs to be passed on to consumers. In the absence of clear evidence demonstrating risks to public health and safety, this option is rejected by the Department.

5.5 Regulation of Psychological Testing

The Issues Paper sought submissions on the issue of whether there is a need to regulate the administration of psychometric and psychological tests by psychologists, and, if so, a proposed regulatory structure. The paper noted that the Royal Commission has highlighted problems involved in the administration of tests to patients who were treated at the Chelmsford Private Hospital.

The Royal Commission into Deep Sleep Therapy proposed specific controls to regulate individual psychologists. While the Board already provides in its Code that practitioners should ensure they are aware of a test's limitations, that they should score the tests according to manuals, and that they should not conceal deviations from standard practice in professional practice, the Royal Commission took the view that the Board and Code should go further. The Royal Commission proposed:

- (i) the Board should take an active role in accrediting tests;
- (ii) the psychologists should disclose where inappropriate tests are used to both clients and other professionals; and
- (iii) psychologists should be required to disclose variations from the standard testing procedure to clients and other professionals.

The Department sought further evidence to demonstrate that the administration of tests is leading to significant harm to patients.

Submissions

Consumers highlighted the importance of civil rights issues, and the significant harms that could arise from the inappropriate administration of psychological tests. Most submissions did not support the need for legislative action although there was some support for further action, primarily through improving the Code of Professional Conduct which, under the current Act, is developed by the Board (See paragraph 2.2). These submissions noted the potential for harm to arise although they were divided on the appropriate means of addressing the problem. Although some supported the Royal Commission proposal to establish a list of acceptable and unacceptable tests, alternatives were also proposed. In particular, the Board has proposed that it develop criteria for the assessment of tests. Two submissions argued the Board should proscribe any of those tests which are clearly unacceptable.

The need for reform

The Royal Commission into Deep Sleep Therapy highlights the potential for treating medical practitioners to place reliance on the findings made in psychometric or psychological tests

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(1977) Report of Advisory Committee on Proposed Registration of Psychologists to the Hon K J Stewart, MP, Minister for Health at p 26.

administered by another health practitioner. In that case 281 patients received such tests, and the Commissioner found that the test reports had contributed to the treatment decisions for some patients including administration of deep sleep therapy.⁴⁵ Although conclusions were not reached in respect of individual deep sleep patients, the Commissioner commented there is “serious concern whether the conclusions [in the test reports] reflected the true condition of the patient”.⁴⁶ The Commissioner noted that one of the difficulties which existed at that time was the lack of up-to-date material on test reliability.

There is a lack of systematic research into injury rates or harm arising from psychometric or psychological testing. However, the potential for adverse events to arise from the administration of psychological testing is recognised. Individuals could have inappropriate treatment administered. Alternatively, inappropriate employment might be obtained, or people may be excluded from employment following consideration of the results of tests. Although insufficient evidence has been made available to support amendments to the Psychologists Act 1989 to ban psychological testing completely, it is clear that there are risks that should be addressed. In addition the Board has received some complaints regarding testing practices. The risks primarily relate to the use of tests whose variability or reliability is questionable, or the failure to disclose variations from standard testing procedures by practitioners.

The first problem arises because of the wide number of tests available for use, and the limited ability of psychologists to verify all tests that they may consider for use. Individual psychologists may not (and consumers clearly are not) in a position to assess whether tests are appropriate for use. While material which reviews the suitability of tests is available, the full scope of this material may not be readily accessible in a comprehensive form for informed decisions to be made. In addition, conflicting expert evidence may be available, but it is difficult for psychologists to distinguish between such material.

Guidelines on acceptability of tests

The Department is of the view that further consideration should be given to the issue of the Board taking a more active role in providing guidance to psychologists and consumers regarding the acceptability of tests. While practical and cost implications would arise if the Board were required to assess all tests, a less costly but effective approach could be for the Board to establish guidelines on the acceptability of tests. Further to provide certainty, and protection for consumers, where evidence is available that certain tests are unacceptable under the guidelines, such tests should be proscribed as unacceptable by the Code of Conduct for use by psychologists.

It is not possible to assess such action at this time in accordance with the Competition Principles Agreement as the benefits and costs of proscribing an individual test can only be determined once such a test has been identified. In light of the recommendation below that the Code of Professional Conduct be made by Regulation, the costs and benefits of proscribing particular tests can be considered as part of the regulatory impact statement process.

Disclosure of variations from standard testing practices

⁴⁵ The Hon Acting Justice JP Slattery, *Report of the Royal Commission into Deep Sleep Therapy* Vol 9 (1989) at p 54

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The second problem relates to the failure to disclose variations from testing practices to other practitioners and consumers. The current Code of Conduct would appear to address the other matters raised by the Royal Commission concerning disclosure of variations and the use of unacceptable tests, although it is unclear whether practitioners are required to disclose this information to clients.

In light of the generally accepted principle that patients have a right to make informed decisions about their treatment, the Department is of the view that consideration should be given to amending the Code of Conduct to require disclosure of variations by psychologists in test reports. Although the costs and benefits of such disclosure requirements will be assessed fully in the making of the Code of Conduct, it would appear that such a course of action would have relatively few costs for practitioners, government or consumers, while potentially delivering significant benefits by empowering consumers to make informed treatment decisions. Such issues will be fully considered when consideration is given to amending the Code of Conduct.

While less formal regulatory options such as a voluntary code of practice or Board guidelines are available, further consideration can be given to these options in reviewing the content of the Code. However, it should be noted that such options are considered to be less likely to result in substantial benefits because of the imbalance of information between consumers and practitioners administering tests.

Use of tests by other practitioners

A number of practitioners argued that restrictions should be placed on the use of tests so that non-registered persons such as counsellors and junior psychologists are prevented from using them. However, the notion that psychologists should be the only practitioners entitled to use tests was strongly opposed by a number of professionals. The Department is of the view that it is inappropriate to seek to promulgate regulations that restrict the use of tests by all professionals (or to restrict the use of tests by other professionals) within the Psychologists Act.

However, it is recognised that the potential exists for similar problems to arise in regards to the use of tests by non-psychologists as outlined above. Therefore, registration authorities and professional associations that monitor the conduct of professionals using tests should review the appropriateness of current guidelines to determine whether further action is necessary.

Recommendation 3

That the Board consider proposals:

- *to establish criteria for the acceptability of tests;*
- *to specify a list of unacceptable tests in the Code of Professional Conduct;*
- *to include a requirement in the Code of Conduct for practitioners to disclose to clients where they have varied from standard testing procedures.*

6. REQUIREMENTS FOR REGISTRATION AND ENTRY RESTRICTIONS

6.1 Introduction

A number of criteria for registration are set under the Act. (See point 2.2.) The Board may also refuse registration on a number of grounds. Although failure to gain registration does not prevent a person from practising or providing services, if entry level requirements are set artificially high, this may restrict the number of people able to seek registration as a psychologist, with a resultant impact on competition. Alternatively, although the barriers may not be high or onerous, there may be limited access to appropriate educational courses and supervision opportunities creating a barrier to entry for intending practitioners.

The Department has assessed the current criteria in accordance with the Competition Principles Agreement.

6.2 Academic Requirements and Supervised Practice

The Issues Paper and Submissions

The Issues Paper sought comments on whether:

- (i) the current registration requirements of four years academic experience and two years practical experience are appropriate;
- (ii) the range of courses recognised by the Board could be broadened to allow a larger number of persons to be registered without exposing consumers to harm.

The Paper noted that the Australian Psychological Society has recently changed its membership requirements so that a person seeking registration must have six years of academic qualifications. Some have argued that these requirements should be reflected in the Act.

The following general points were made in submissions in regard to academic requirements.

- ▶ Most submissions considered it would be inappropriate to reduce academic qualifications from four years to three years as it does not provide sufficient training to practise as a psychologist and could expose consumers to harm.
- ▶ The Board already has the power to recognise additional qualifications. A number of submissions argued that the current number of accredited qualifications is about right and should not be broadened beyond formal scientific training and practical experience. However, some suggested that the accreditation system on which the Board relies displays a bias towards the ‘scientist-practitioner’ model and university based training without sufficient emphasis on practical experience. One submission argued that innovative approaches to education have been restricted.
- ▶ A significant number of submissions suggested that current requirements for supervised practice should be retained on the basis academic qualifications alone do not adequately equip practitioners for practice. Contrary to this view, some submissions noted that the current requirement for supervision results in significant additional training costs and there is a need for greater flexibility so that other practical experience can be taken into account.

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- ▶ A number of submissions suggested that an additional two years post-graduate qualification should be a requirement for registration to protect consumers from harm because of the complexity of cases that may present and to overcome problems with the variability of supervision and declining quality of undergraduate education. However many submissions argued this will lead to significant costs for intending practitioners with a decline in the number of professionals resulting in staffing difficulties for the health system, particularly in rural areas.

Since the Issues paper was prepared, the Board has written to the Department concerning current requirements under section 6(i) noting there is some doubt as to whether the Board can refuse registration where a four year programme of study does not contain a sufficient component of psychology.

An increase to six years

The Department does not support increasing the academic requirements for registration to six years. This will have a significant impact on restricting entry to the market which will be exacerbated by increased fees for post-graduate education and fewer university places.⁴⁷ Such an increase will present unique problems for regional, rural and remote parts of Australia.⁴⁸ Comparisons with overseas jurisdictions do not form a sound basis for increasing academic requirements as they are based on a raw comparison of years of study, without assessing the differences in course content, university admission arrangements and other potential variables.

While the concern that four year training courses are not of an acceptable standard is noted, it is unlikely the solution is to raise academic requirements to six years. The complaints history of the profession provides no evidence that 'undertrained' practitioners are compromising public health and safety. The recent National Board of Employment, Education and Training, Higher Education Council (1996) *Professional Education and Credentialism* found there is no formal accreditation process which includes on site visits and an external process of review for psychology.⁴⁹

The Board has indicated that while it does not support moves to a six year degree at this time, the Act should be amended to enable such a change to be accommodated at a later date. This is not supported given that such a change will have significant implications for many professionals and students and should therefore be the subject of Parliamentary debate.

Less than four years study

The Department accepts the view that a sufficient level of competence is required for practitioners to assume the title 'psychologist' and, at present, this is generally only provided through four years of academic training. Although it is recognised that the requirement for four years academic training has cost implications for students (and tax-payers), as post-graduate study is required to meet the four

⁴⁷ For the year 1995, the average cost of a masters degree in psychology was \$ 5,080 with fees ranging from \$4,120-\$7,000. One study noted that the additional cost from the increase in training requirements would be \$ 1.45 million per hundred EFTSU (Equivalent Full Time Student Unit) with an annual reduction in intake of 8 EFTSU per year. Costs have risen further since that time - National Board of Employment, Education and Training, Higher Education Council (1996) *Professional Education and Credentialism*: Australian Government Publishing Service - Canberra at 55.

⁴⁸ Guldberg and Sivaciyan, op cit at p.25

⁴⁹ ibid at pp 35-6

year criteria,⁵⁰ no evidence was presented demonstrating that intending practitioners are discouraged from undertaking further study. Indeed, it appears that there is an over-supply of registered psychologists given the high number that assume practice under another title.

However, comments made in submissions that the requirement for four years academic training limits innovative approaches to education have been considered. Shorter, more intensive degrees may become available which produce graduates of an equivalent level of competence to the current four year requirements. In such circumstances, the actual number of years study becomes irrelevant - the significant issue is whether individual courses, whether of four years duration or less, produce graduates with sufficient skills for initial practice. Indeed, the Board recognises a three year intensive degree from the United Kingdom as equivalent to the four year degree generally offered in Australia.

While the Board can recognise qualifications that are equivalent to those of four years duration under section 6(1)(iii), there is a strong argument to be made that this process should become more transparent. It is therefore proposed to establish a process whereby educational institutions can apply to the Board to have courses or programmes of study accredited if they can establish graduates will have an equivalent level of competence to those completing a four year programme of study. This criteria will eliminate any risk to public health and safety. An appeal against the Board's decision would lie to the Administrative Decisions Tribunal.

Psychology Content of Programmes of Study (Section 6(i))

Although the Department concedes there is some uncertainty in regard to the current drafting of section 6(i), the Board still has to determine whether the course has sufficient specialisation in psychology. The Act should be amended so that criteria can be set by Regulation against which the Board can determine whether courses have sufficient specialisation in psychology. Consequentially, the power to prescribe additional qualifications under 6(ii) will be removed.

Recommendation 4

That the Psychologists Act be amended to:

- (i) provide that educational institutions may apply to the Board to have courses accredited for the purposes of section 6(iii), with a right of appeal to the Administrative Decisions Tribunal, where they can demonstrate the course produces graduates with an equivalent level of attainment to graduates of a four year programme of study.*
- (ii) clarify section 6(i) so that criteria can be set by Regulation to determine when a course has sufficient specialisation in psychology.*

Supervised Practice

It is necessary to consider the effect of supervised practice on competition. While such a requirement is intended to ensure that practitioners have sufficient practical experience before gaining full registration, it is recognised that such a requirement may impose costs on the community as a whole and have an adverse impact on competition, particularly if it inappropriately limits the number of

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For example, in 1995 the average cost of a graduate diploma was \$5 412 with fees ranging from \$3 600 - \$13 500 - *ibid* at 55

practitioners that gain full registration.

The principal benefits or advantages of supervised practice have been identified in submissions as the reduced risk of harm for patients. Supervised practice is necessary because existing academic training does not provide graduates with sufficient practical skills or training. By requiring practitioners to practise under supervision for the first two years, the risk of harm to individual patients is minimised and practitioners will have a supported environment to respond to difficult cases. Although there is no quantitative data available which demonstrates these benefits, submissions addressed the adequacy of existing four year academic training, noting the need for an additional period of supervised practical experience. A 1995 study of senior psychologists' and employers' attitudes to the existing four year training notes that only 52% of psychologists considered a four year degree adequate preparation for employment with that figure dropping to 28.5% for the traditional honours fourth year programme.⁵¹

However, the additional requirement for supervised practice has potential disadvantages or costs.

- ▶ *Requirements for supervised practice can limit entry to the profession where access to supervision opportunities is limited. This can result in higher prices for consumers.*

Little evidence has been provided to the review to suggest that practitioners with four year degrees are discouraged from seeking full registration or that practitioners are not able to obtain supervision. The Board's guidelines on supervision allow the requirement to be met through supervision by an employer or completion of a higher degree at masters level. Supervision can also be provided through a private college or another practitioner.

- ▶ *Requirements for supervised practice increase costs*

Supervision through an employer has minimal costs for the registrant, although there may be costs associated with time spent in addressing matters arising from supervision. However, alternative forms of supervision have higher costs, and this may act as a barrier to new practitioners. Those undertaking a masters degree to complete course requirements incur university fees and are unable to earn an income. The Department is aware that some conditional registrants who are unable to obtain supervision through their employer incur costs in participating in supervision programmes.

On balance, the Department is of the view that the current requirement for two years supervised practice is an appropriate requirement for ensuring that individuals have sufficient practical experience prior to practising as a full registrant. Removal of the requirement could potentially expose consumers to an unnecessary risk of harm.

Obviously, there are alternatives to ensure that practitioners have sufficient practical experience before entering the work force. For example, undergraduate programmes could incorporate a practical component in their courses, possibly resulting in lower overall costs. However, such programmes are not readily available at the present time. Although not available at present, it is considered the Act should not prevent such a development. The "add on" nature of the current supervision requirement limits the potential for innovative approaches to education to develop. Therefore it is proposed to amend the Act to enable the Board to grant full registration where the applicant has:

⁵¹ Mullaly, EM, Kelly, RA and Wearing, AJ (1985) *Where do psychology honours graduates go?* Australian Psychologist 20, 51-60

- (i) two years practical experience satisfactory to the Board; or
- (ii) has gained practical experience satisfactory to the Board as part of a programme of study at under-graduate level, post-graduate level or both.

To ensure transparency, the Act should provide that applications can be made to the Board to have programmes under (ii) accredited by the Board, with a right of appeal to the Administrative Decisions Tribunal.

Recommendation 5

That the Psychologists Act be amended to enable combined academic/practical courses to be recognised for the purposes of supervision.

6.3 Barriers to Entry - Good Character

The current Act requires a person seeking registration to establish that they are of good character. The Paper noted that in some cases, character requirements can unnecessarily restrict entry to the profession where applicants are refused registration for inappropriate reasons. Options raised for consideration in the paper include dispensing with the requirement completely or more closely defining the term ‘good character’.

Submissions to the review overwhelmingly supported the need for a requirement for good character on the basis it is essential for minimising the risks of harm from inappropriate or unethical conduct. It is argued the need for this requirement is greater in the market for psychological services because patients may be in a vulnerable state of mind and are at greater risk of exploitation.

Submissions are divided on the issue of whether ‘good character’ should be more closely defined. While the benefits of minimising inappropriate exercise of the discretion are noted, submissions doubted whether this is practical. Further there is a substantial body of case law to control exercise of the discretion. The HCCC has expressed the view that any attempt to define ‘good character’ more closely may undermine the protective function that registration is intended to serve.

6.4 Other Registration Criteria

The current Act provides that the Board may refuse registration where:

- the applicant has been convicted of a criminal offence which renders a person unfit in the public interest to practise psychology;
- the applicant has been deregistered in any other jurisdiction and the act or omission would have enabled the person to be deregistered in NSW;
- the applicant is addicted to drugs or alcohol or does not have sufficient physical or mental capacity to practise psychology in NSW.

These criteria are directed towards ensuring that consumers have appropriate information as to whether a practitioner is an appropriate person to be practising psychology in NSW. As a result of the review of the Act carried out by the Department and a report prepared by the NSW Ombudsman,

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the Issues Paper canvassed a number of possible amendments to the Act that would provide the Board with additional powers to refuse registration or impose conditions on registration where practitioners are unsuitable for practice. These include the following:

- empowering the Board to impose conditions or refuse registration if it is satisfied an applicant does not have sufficient skill or competence to practise psychology;
- introduction of a requirement of demonstrated proficiency in English;
- introduction of a power to impose conditions on an applicant where similar conditions have been imposed in a foreign jurisdiction;
- introduction of a power to impose conditions in certain circumstances, for example, where a practitioner does not have sufficient competence to practise psychology;
- strategies to improve the information available to consumers in regard to conditions.

Submissions were sought on the costs and benefits of such amendments and on difficulties with the current grounds for refusing registration.

Skill and Competence

The Ombudsman recommended the Act be amended to (i) require applicants to demonstrate professional competence at the time of registration; and (ii) enable the Board to refuse registration or impose conditions on a person's registration on the grounds of professional misconduct prior to obtaining registration under the Act. The Ombudsman argued that a person could under the current Act obtain registration even though they may have engaged in inappropriate conduct prior to registration. As a titles Act, a person could attain the qualifications and seek registration at a later date. However conduct demonstrating a lack of skill prior to seeking registration cannot be considered. Although, the specific Ombudsman's recommendation was not supported in the Issues Paper, submissions were sought on the costs and benefits of an alternative, namely, that the Board have the power to refuse registration if a person does not have sufficient skill or knowledge to practice psychology.

There is general support among submissions for the Department's proposal. Although it is recognised that competence should be established primarily through satisfying the qualification requirements, there are significant benefits in including a power to refuse registration in overriding circumstances where the applicant has engaged in conduct, prior to seeking registration which demonstrates that they have a lack of skill which has not been otherwise addressed prior to seeking full registration. If such action were considered appropriate, the application would be referred for investigation by the HCCC and be subject to a hearing process. The overall impact on market entry is likely to be minimal. The benefits in terms of improved information to consumers and reduced costs (the amendment will overcome the problem of the Board having to register the person and then lodge a complaint where there is prior conduct demonstrating a lack of skill) justify the amendment.

Conduct in another jurisdiction

The Ombudsman recommended that the Board be given a power to refuse registration or impose conditions on a practitioner who has been the subject of a disciplinary process in another state or territory. This power would be available irrespective of whether de-registration action was taken

and/or conditions were imposed in the 'home' jurisdiction. The Issues Paper noted that existing provisions of the Psychologists Act 1989 and the Mutual Recognition Act 1992 provide an appropriate framework to deal with practitioners who have been subject of action in another State or Territory. It was also noted that the Board already has the power to refuse registration outright where a person has been de-registered in a jurisdiction to which mutual recognition does not apply. However, submissions were sought on the issue of whether the Act should be amended to allow the Board to impose conditions on registration (rather than refuse registration) where the applicant has engaged in professional misconduct in a foreign jurisdiction to which mutual recognition does not apply. These would be similar to conditions imposed following a disciplinary hearing. Examples of such conditions include requirements that a practitioner complete additional training or supervision, that they attend counselling, that they refrain from practice in certain settings or attending certain clients, that they submit to rehabilitative treatment or that they only attend clients with another person present.

Most submissions emphasised the importance of incorporating provisions to enable conditions to be imposed where similar conditions have been imposed in a foreign jurisdiction or registration has been refused. This is consistent with the principles of the Mutual Recognition Act 1993 as it applies to states and territories. Such amendments will provide assurances to consumers that those holding themselves out as a psychologist have not engaged in inappropriate practice, such as sexual misconduct in other jurisdictions.

Fluency in English Language

The Board and the HCCC have argued that applicants for registration should be required to demonstrate fluency in the English language as a requirement for registration. This was not supported by the Department in the Issues Paper in the absence of clear evidence demonstrating a need for such a requirement.

Many submissions, including the Board, other registration Boards, the HCCC, government practitioners and consumer groups, argued for such a requirement noting that communication skills are essential in a hospital setting and to keep abreast of professional and legal requirements. The other main reason advanced is that practitioners working in crisis teams will need sufficient language skills to enable them to deal with clients from a broad range of backgrounds.

However a substantial number of submissions, including those from private psychologists, the Public Service Association (PSA) and psychologists in area health services, argue that such a requirement is unnecessary, and that the need for adequate English can be dealt with on a case by case basis in individual employment situations.

While the Department remains concerned that an English language requirement could result in unnecessary hardship, for example, if used as a ground for refusing registration outright it would effectively deny or limit overseas applicants access to an income following migration it is recognised that there is a need for fluent English in many areas of practice. Indeed it would be impossible for practitioners to keep abreast of developments in the absence of such a requirement. The Department has formed the view that the case for fluency in English is strong because of the reliance on communication in psychology.

Other Conditions on registration

In addition to the specific issues of whether the Board should have the power at the time of initial registration to impose conditions on practitioners the subject of disciplinary action in a foreign

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jurisdiction, practitioners without sufficient competence and for the purposes of ensuring proficiency in English, the Issues Paper canvassed the issue of whether the Board should have the power to impose conditions on a person's full registration in other circumstances. For example where a person is affected by an impairment. Submissions were invited on the costs and benefits of such amendments.

There is widespread agreement among submissions that the Board should have the power to impose conditions on a person's full registration. However, the evidence of the benefits of this approach was limited to circumstances where an applicant has an impairment, such as drug or alcohol addiction, which may compromise their standards and ability.

Such amendments will not have an adverse effect on market entry. Given the Board already has the power to refuse registration in such circumstances, the amendments will provide the Board with alternative, less restrictive options to enable individuals affected by impairment to be registered. Such conditions might include that the practitioner attend counselling for a certain period, submit to drug or alcohol testing or that they undergo treatment to address the impairment.

Information regarding conditions

Submissions were sought on the issue of whether conditions should be available to the public through the register, or whether practitioners should be required to reveal those conditions to patients. Such amendments would improve the information available to consumers.

Although many submissions argued that individual practitioners should not be required to disclose conditions, a number of practitioners and area health services argued that conditions should at least be recorded on the register and made available on request. The Department is of the view that this process could be enhanced by clarifying the different categories of registration - full registration, conditional registration where supervision requirements are still to be completed and full registration subject to conditions (following disciplinary action or inquiry at registration) - and by introduction of a requirement that practitioners not represent themselves to be full registrants where they are subject to conditions. For example such practitioners could use the title "psychologist (conditionally registered)". This would indicate to consumers where a practitioner is subject to conditions. Consumers could pursue the issue further by approaching the Board or the individual practitioner.

Recommendation 6

That the Act be amended:

- *to provide that the Board may refuse registration (either conditional or full) where a person does not have sufficient skill or proficiency in English;*
- *to provide that the Board may impose conditions on full registration where:*
 - (i) an applicant has been the subject of disciplinary action in a foreign jurisdiction;*
 - (ii) the practitioner is affected by an impairment;*
- *provide that conditions be recorded in the register and practitioners the subject of conditions be prevented from holding themselves out as full registrants.*

7. REGULATION OF CONDUCT AND MARKET INFORMATION

7.1 Introduction

The Issues Paper noted that the problem that the legislation seeks to address is the potential risk of harm from unqualified, unscrupulous or substandard operators in the market for psychological services. The Act regulates the conduct of those holding themselves out as registered psychologists to ensure that standards are maintained in three ways:

- specific statutory restrictions on conduct (eg regulation making powers over certain advertising);
-
- a non-binding Code of Professional Conduct; and
- a complaints and disciplinary system which is established to monitor the standards and conduct of registered professionals.

However, the Paper recognised that measures designed to ensure that practitioners adopt high standards of practice may inappropriately focus on the commercial conduct of psychologists thus limiting information to consumers on the different services available. In many cases the costs of restricting such conduct may outweigh any benefits that arise.

7.2 Statutory Restrictions on Commercial Conduct

Regulation making power over advertising

The current Act includes a regulation making power over advertising. To date no regulations have been made restricting advertising by psychologists or practice companies. Such conduct has been effectively controlled by the Trade Practices Act 1974 and its prohibitions on misleading and deceptive conduct. In this context, the Issues Paper sought submissions on whether the regulation making power should be deleted.

There is strong support for removal of the power over advertising, although some argue (including the Board) that it should be retained in case practitioners engage in unethical advertising. Given that no evidence has been provided demonstrating that patients are harmed by inappropriate advertising, the power should be deleted. Note, however, that the inclusion of a more general restriction on misleading and deceptive conduct is discussed below.

Regulation making power over standards for premises

A regulation making power is included in the current Act so that standards for premises can be set. To date no regulations have been made requiring premises to be of a certain standard. The Issues Paper argued consideration should be given to deleting the power on the basis it is not appropriate for the regulations to set such requirements because: (i) the quality of premises from which services are provided is a commercial decision for the psychologist; (ii) the prescribing of standards may restrict innovative approaches to the delivery of psychological services; (iii) the risks to patients from inadequate premises are minimal.

Although not unanimous there is general support for the removal of the power to regulate premises. Although the Board has argued that the power should be retained so standards can be set for premises to protect patient confidentiality, this is already covered by a practitioner's general duties and can be addressed expressly in the Code of Professional Conduct.

Advertising qualifications recorded in the register

The current Act provides that the Board may record in the register particulars of such further or additional qualifications possessed by a registered psychologist as the Board may direct to be entered in the register. The Board can also direct that particulars of any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description which the registered psychologist is authorised by the Board to use as a registered psychologist may be recorded in the register.

There is no sanction against a practitioner where the psychologist uses a title or description that is not recorded in the register. However the Act provides that holding oneself out as having qualifications in psychology other than those recorded in the register must constitute professional misconduct. The presumed rationale for these provisions is that it ensures psychologists only advertise qualifications in psychology, which are recognised by the Board.

The Issues Paper sought submissions on the advantages and disadvantages of recording qualifications in psychology in the register and the prohibition on advertising qualifications that are not recorded in the register. Submissions supported the power of the Board to record additional qualifications in the register highlighting the benefits to consumers of having an independent source of information of appropriate and inappropriate qualifications. The Department supports retention of this power.

Some submissions noted, however, that the prohibition on advertising qualifications not recorded in the register should be removed because it prevents psychologists advertising qualifications that the Board refuses to recognise. These submissions argue the prohibition is anti-competitive and unnecessary because once a person has the basic registration requirements, there is minimal risk of harm if they advertise qualifications that are not recorded in the register.

The Department is of the view that the power of the Board to record qualifications and descriptions in the register should be retained for the reasons outlined above. However the prohibition on advertising qualifications not recorded in the register should be removed because it limits the information available to consumers. Any harm can be minimised by general prohibitions on misleading and deceptive conduct under the Trade Practices Act 1974 or Fair Trading Act 1982. In serious cases where practitioners mislead the public, it may form grounds for a complaint of professional misconduct on the grounds that falsely claiming to hold qualifications may be considered “improper or unethical conduct”.

Recommendation 7

That the Psychologists Act be amended to:

- . *remove the regulation making power over advertising and premises;*
- . *to remove the prohibition on advertising qualifications that are not recorded on the register.*

7.3 Code of Professional Conduct

Section 13 of the Act permits the Board to develop a Code of Professional Conduct. Although a breach of the Code is not identified as grounds for a complaint, the Board (or a Court) could consider a breach of the Code in determining if professional misconduct has occurred.

Impact of the Code of Professional Conduct

Codes of professional conduct can play an important role in protecting the public from harm by establishing standards to be observed by practitioners in the course of their professional practice. Such codes can assist registration boards in determining whether practitioners have adopted appropriate standards. Similarly, they can be used by other Tribunals and Courts to assist in defining standards of acceptable practice. Most importantly it serves as a guide for practitioners as to the expected standard of conduct or practice.

However, codes can be used to restrict competition. Where they are recognised in legislation, they can restrict competition by altering the behaviour of individual practitioners and can impose compliance costs on members of the profession. To this extent, the review needs to consider whether inclusion of a provision to enable a Code to be developed is consistent with the requirements of the Competition Principles Agreement. Obviously, whether such a Code has such an impact depends on the content of the Code itself.

Issues raised by the Ombudsman

The Ombudsman recommended that the Act should be amended to specifically provide that a breach of the Code is grounds for a complaint. The Ombudsman appeared to be of the view that a breach of the Code alone could not sustain a finding of misconduct under the Act.

The Issues Paper did not support the Ombudsman's proposed amendment because: (i) a breach of the Code can already be considered as evidence of misconduct and could found a complaint; (ii) adoption of a two tier definition of misconduct will broaden the grounds for complaint. In addition, although the Code is an important means of providing direction to practitioners on standards to be adopted, the Issues Paper outlined a number of concerns with the process for developing the Code and the content of the Code. In particular:

- (i) there are no accountability mechanisms to ensure the Code serves the public at large, that it is in the interests of consumers, or is consistent with Parliament's intent;
- (ii) the Code may enshrine anti-competitive practices which do not serve the interests of consumers;
- (iii) as a breach of the Code could be considered as evidence of misconduct there may be a need for checks to ensure that trivial matters are not addressed in the Code;
- (iv) no guidance is provided in the Act on matters to be addressed in the Code and important matters may be overlooked.

Is there a need for a Code of Professional Conduct?

In the absence of a Code of Professional Conduct, practitioners would receive less guidance on appropriate standards to be adopted in the course of professional practice. While the definition of professional misconduct and the common law would go part of the way to identifying appropriate standards, there may be many areas of professional practice in which it is unclear to practitioners what standards should be adopted. The Code can in this regard be seen to be more productive by establishing clear standards to be observed by practitioners.

While the need for standards could be addressed by the profession itself through professional associations or other advisory bodies (for example the National Health and Medical Research Council), it can be difficult for the practitioner to determine exactly what is the appropriate standard

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to be observed, particularly where there is a range of conflicting guidelines on particular issues. The Code can provide a single reference point for both consumers and practitioners.

Of greater concern is the fact that codes developed by professional associations may give undue emphasis to protecting certain forms of conduct by the profession and may not be consistent with the public interest. In particular, the deeming of matters as “unprofessional conduct” by an association may have an adverse impact on legitimate commercial conduct, for example, restrictions on advertising. As disciplinary bodies and courts may have reference to such standards in hearings, practitioners may feel obliged to observe such standards, even though they are not legally binding. Many submissions highlighted the importance of having a Code of Conduct independent of professional associations.

The benefits and costs of a Code can only be determined where the precise content of the Code is known. While the concerns that Codes can restrict competition or can impose unnecessary compliance costs on practitioners are noted, in the absence of a legislative code, standards would be set by other bodies which may result in the same or even greater restrictions on competition and compliance costs for practitioners. Some practitioners and the Board argued that as the Code deals with ethical standards, trade practice issues are not relevant or should be subservient to such standards. However, some submissions identified two specific provisions of the current Code that either restrict competition to the detriment of consumers or are not otherwise in the interests of consumers - the prohibition on training or assisting unregistered persons and criticism of colleagues in public.

By having the Code established or adopted under the Act, disputes or appeals would be reduced as greater certainty would be provided to disciplinary bodies to assist them in making decisions. Further, overall benefits can arise where Codes are appropriately directed to address issues of professional practice that may result in harm, whether physical, financial or mental, to consumers.

The concern that Codes may not be developed with due regard to the public interest is noted. However, such concerns can be addressed by ensuring that the process for developing the Code is specified in the legislation, and has due regard to public interest considerations.

Options for the Code of Professional Conduct

A range of options was canvassed in the paper including: amending the Act to require the Code to be approved by the Minister; subjecting the Code to disallowance by Parliament; establishing a formal process for developing a Code involving adequate representation of professionals, consumer and government interests; and requiring the Code to be consistent with other legislation.

After considering submissions the Department remains concerned at the process for developing the Code, particularly with respect to situations where the Code sanctions anti-competitive conduct. There is strong support for the position that the Code should be developed following extensive public consultation. One practitioner suggested that the Code should be drawn so it is consistent with the Trade Practices Act 1974 (Cth), while the Health Services Association and the Australian Psychological Society suggested that it should be subject to Ministerial approval.

It is considered essential that the Code does not sanction anti-competitive conduct (particularly that which breaches the Trade Practices Act), and that arrangements are put in place to ensure the Code serves the interests of consumers. It is therefore proposed that the process for developing the Code

of Professional Conduct be altered to ensure that the matters it addresses are appropriate and that it does not enshrine anti-competitive practices or sanction conduct that is not in the public interest. The Department has proposed that the legislation provide the Board must release the Code for public comment along with an impact assessment report which identifies the costs, benefits and alternative options of the proposals. Following on from this process the Board will be required to submit the Code to the Minister for approval.

Although some submissions did not support making a breach of the Code of Professional Conduct a ground for complaint, consumer groups expressed concern that this significantly undermined the benefits of having a Code. As noted above the Ombudsman recommended that the Act should be amended to specifically provide that a breach of the code is grounds for a complaint. If the complaint were proved it would then form the basis for the imposition of disciplinary sanctions. Such an amendment is not appropriate as it would give the Code a mandatory status that it does not have at present. The Code is intended to be for the guidance of consumers and practitioners only. In any case, a breach of the Code can form the subject of a complaint, however, the key issue in determining whether disciplinary sanctions should be imposed is whether the conduct complained of constitutes unsatisfactory professional conduct or professional misconduct, and not whether the Code has been breached. The Department supports amendment of the Act to clarify that a breach of the Code may be considered as evidence of unsatisfactory professional conduct or professional misconduct.

Recommendation 8

That the Act be amended:

- (i) to require the Board to release a draft Code and impact assessment report for public comment;*
- (ii) to require the Code to be approved by the Minister;*
- (iii) to clarify that a breach of the Code may be considered as evidence of unsatisfactory professional conduct or professional misconduct.*

7.4 Complaints Handling and the Disciplinary System

As noted at paragraph 2.2 complaints may be made to the board or the Health Care Complaints Commission. Submissions were sought on whether reforms to the current disciplinary system to eliminate restrictions on competitive conduct are required. A range of amendments were also canvassed in the Issues Paper:

- to broaden the range of matters that may be the subject of a complaint.
- to enhance the complaints and disciplinary system in its ability to identify practitioners that are not of a suitable standard to practise psychology;
- alternatives to the current Board/Professional Standards Committee disciplinary for dealing with complaints.

7.4.1 The need for a statutory disciplinary system

Complaints and disciplinary systems play a key role in maintaining professional standards and protecting consumers from harm. However, in enforcing such standards through disciplinary arrangements, such systems can operate against consumers where they impinge upon legitimate commercial and competitive conduct by psychologists. An example of this was discussed earlier with regards to the restrictions on the advertising of professional qualifications.

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Submissions addressed the *benefits* arising from the existence of a statutory disciplinary system highlighting the ability to take action against an incompetent or unethical practitioner in a cost effective manner. The complaints history of the Board was noted, in particular, that most complaints that proceed to disciplinary action have involved serious misconduct and harm to patients with a high proportion relating to sexual or other inappropriate relationships. Consumers have assurances in regards to ongoing competence. Submissions noted that it has encouraged the profession to take interest in their own training and development, thus minimising risks of harm or injury to consumers.

While the ability of professional associations to undertake this task was noted, the general view was that an independent disciplinary system is more effective, enhances consumer confidence and minimises conflicts of interest. Such a system also provides a cost effective mechanism for the resolution of disputes between practitioners and consumers.

Few submissions addressed the *costs* of disciplinary arrangements. Clearly there are costs for the HCCC, the Board and practitioners in conducting such hearings. However, it is unlikely that these outweigh the benefits produced from removing unethical or incompetent practitioners from the register, which in turn ensures that consumers have information about those holding themselves out as psychologists.

No evidence was provided demonstrating that the current disciplinary system is inappropriately focussed on commercial conduct, and this is supported by the nature of complaints received by the Board to date. The current definition of misconduct is as follows:

(a) any conduct that demonstrates a lack of adequate:

- (i) knowledge;*
- (ii) experience;*
- (iii) skill;*
- (iv) judgement; or*
- (v) care*

by a registered psychologist in the practice of psychology;

(b) a registered psychologist contravening (whether by act or omission) a provision of this Act or the Regulations;

(c) a registered psychologist's failure to comply with an order made or a direction given by the Board under section 16 or with a condition of registration; and

(d) a registered psychologist's holding himself or herself out as having qualifications in psychology other than:

- (i) those in respect of which the registration was granted; or*
- (ii) those recorded in the register in respect of the psychologist; and*

(e) any other improper or unethical conduct.

The grounds on which the Board may take action essentially relate to issues of competence or skill. The impact of paragraph (d) was discussed previously at paragraph 7.2. Subclause (c) essentially relates to orders made by the Board following disciplinary action where it is satisfied the substance of

a complaint has been proved. Although ground (e) of the definition of professional misconduct would appear to impose a broad discretion on the Board, in practice its exercise is limited to those matters which affect the fitness of the person to hold themselves out as a psychologist. Indeed the matters that would fall within this provision are those covered by the Code of Professional Conduct, or matters such as sexual misconduct, inappropriate relations with patients or fraud/over servicing.

No evidence has been presented to suggest that this provision has been used to inappropriately to restrict commercial conduct. The complaints history of the Board highlights this point. In light of the reforms recommended above in relation to the Code of Professional Conduct, the potential for such a provision to be used inappropriately is further reduced. Further, the reforms recommended below to enhance the system's impartiality will limit the potential for such a situation to arise.

Alternatives to the disciplinary system would include professional association monitoring standards, or legal action at common law or under the *Trade Practices Act 1974*. However, in both cases, neither system would achieve the objectives of the Act because there is no ability to prevent practitioners from using the title "psychologist". In the case of legal action, high costs would be incurred by consumers seeking redress. On this basis, the retention of a statutory disciplinary system is supported.

Recommendation 9

The Department supports the retention a statutory system for receiving and handling complaints against psychologists.

7.4.2 Broadening the definition of misconduct

The current Act has a single definition of professional misconduct. More recent health professional registration Acts have adopted a two-tiered definition of misconduct consisting of the less serious 'unsatisfactory professional conduct' and the more serious 'professional misconduct'. The intent of the dual definition is to overcome the problem of the statutory definition of misconduct being read down so that it only applies to conduct attracting the "gross reprobation of peers". As a result of this approach more complaints can be properly dealt with through the disciplinary process. The Issues Paper sought submissions on the costs and benefits of a two-tier definition of misconduct.

Submissions supported introduction of the dual definition noting that if a wider range of matters can be brought to the attention of the Board, then consumers will have greater assurances that practitioners are of an appropriate standard for professional practice. Although the costs of processing more complaints were noted, it was considered these are outweighed by the benefits to consumers enabling a greater range of complaints to be dealt with.

As the definition of professional misconduct provides the basis for disciplinary action, it is appropriate to consider whether the content of the definition has an adverse impact on competition. No submissions directly addressed the issue of whether the current definition has an adverse impact on competition (except as outlined in regard to the advertising of qualifications which has been discussed previously). Some submissions expressed concern that some matters addressed in a code of conduct may be more focussed towards protecting the profession rather than the psychologist's professional relationship with consumers. However this matter has been addressed at 7.3. Introduction of the dual definition is therefore supported.

Recommendation 10

That the legislation be amended to replace the definition of professional misconduct with a two tiered definition of unsatisfactory professional conduct and professional misconduct.

7.4.3 Action where a registered practitioner poses a threat to life or physical or mental health of a person;

The Ombudsman recommended that the Board be granted a discretion to impose conditions on a practitioner's registration or suspend a practitioner from using the title psychologist who is the subject of a complaint where it is necessary to protect the life or physical or mental health of any person. Submissions to the review strongly supported the Ombudsman's recommendation noting the benefits of preventing practitioners the subject of a complaint whose conduct presents a serious risk to patients from continuing to engage in that conduct. This amendment is therefore supported by the Department.

Recommendation 11

That the Act be amended to provide the Board with a power to suspend or impose conditions on a practitioner where it is necessary to protect the life or physical or mental health of any person

7.4.4 Alternatives to the current arrangements for hearing complaints

Background

Under the current system, disciplinary sanctions are imposed by the Board, after a hearing by a professional standards committee or the Board. The Issues Paper identified a number of problems including: decisions relating to deregistration are not undertaken by a body chaired by a legal practitioner; the separation of a hearing conducted by a PSC and the imposition of sanctions by the Board; and the lack of an independent disciplinary body with an appropriate mix of professional, community and legal representatives to deal with serious matters.

The Issues Paper noted that the Medical Practice Act, the Nurses Act and the Chiropractors and Osteopaths Act have adopted a two-tiered professional standards committee/tribunal structure. This system is outlined below as option 1.

The Issues Paper canvassed the option of a single independent disciplinary panel being established with powers to sit either formally, or informally, depending on the seriousness of the complaint, with the ability to change into a formal mode if a matter appears serious enough to warrant deregistration.

Submissions

There is strong support among submissions for the establishment of an independent disciplinary body. Benefits identified include reduced costs, improved consumer information, impartiality and improved adherence to natural justice principles. Most submissions supported the proposal for a single tier disciplinary body as canvassed in the Issues Paper. However, the Board and the HCCC have argued that preference should be given to the two tiered disciplinary system involving professional standards committees for less serious matters and a Tribunal to deal with more complex matters. The single

tiered disciplinary body is opposed by these bodies arguing there should be consistency with other health professional legislation.

In reviewing submissions and during the course of other health professional legislation reviews, the Department has formulated two options for reforming the disciplinary system.

Option 1 - PSC/Tribunal Structure

Option 1 would involve the establishment of the two-tiered disciplinary system as used under the Medical Practice Act 1992, and the Nurses Act 1991. Professional Standards Committees (PSCs) would deal with less serious complaints of unsatisfactory professional conduct and Tribunals would deal with serious complaints of professional misconduct. The relevant Board no longer has a role in determining whether a practitioner has been guilty of inappropriate conduct.

Two members of the relevant health profession and one lay person who may be legally qualified constitute PSCs. If there is no legally qualified person appointed, a legal practitioner may assist the PSC appointed by the Registrar of the Board for that purpose. Proceedings are generally less formal and legal representation is not allowed. Decisions are appealable to the Tribunal and such appeals proceed by way of re-hearing.

Tribunals are chaired by a legal practitioner of sufficient experience and standing. Two professionals and one lay person are also appointed. The Chair has a deciding vote in the event of a tied decision. Because of the seriousness of matters before the Tribunal, legal representation is permitted and the Tribunal has power to award costs. Appeals are limited to points of law or severity and are generally heard in the District Court.

The procedures established in Part IV (Division 2 and 3) of the Medical Practice Act for decision-making in relation to complaints would be utilised. Under these arrangements, complaints made to the Board are to be referred to the HCCC and vis versa. The HCCC and the Board must consult on the complaint (in accordance with the provisions of the Health Care Complaints Act 1993) to see if agreement can be reached between them. The Board can (following consultation) refer the complaint to a PSC or Tribunal, direct the practitioner to attend for counselling, refer for conciliation to the Health Conciliation Registry, or dismiss the complaint. The HCCC cannot direct that the practitioner attend for counselling. Complaints referred to a PSC or Tribunal must first be referred to the HCCC for investigation.

In accordance with the provisions of the Health Care Complaints Act, the organisation with the more serious view of the complaint prevails. Both the Board and the HCCC are under a duty to refer serious matters (other than matters relating to the physical or mental capacity) to a Tribunal.

This system has the advantage over the current system in that the Tribunal/PSC places a higher degree of emphasis on affording the parties natural justice. It is the Department's view that in situations where a professional's livelihood is at stake because of the threat of deregistration, it is essential that a legal practitioner chair such hearings and that the process remain independent of the Board (which has a role in determining what action to take in relation to a complaint) as far as possible. This system is supported by the Board and the HCCC.

Option 2 - A system based on the Dental Care Assessment Committee

Option 2 is based on the complaints handling and disciplinary model which exists under the *Dentists*

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Act 1989. The disciplinary structure in the Dentists Act provides, amongst other things, for the Dental Care Assessment Committee (DCAC) to conciliate and investigate complaints about dentists and make recommendations to the Board for their resolution.

The DCAC provides a forum for independent expert assessment of concerns raised by patients as to the standards of dental services provided to them, and to dispute fees charged for those services. The DCAC also provides a means for the Board to receive a more detailed assessment of a complaint before determining how to proceed. In this regard, the Committee can refer a patient for an independent examination and obtain such other evidence, professional reports and advice, as it considers desirable.

The DCAC is made up of three dentists and a consumer representative, and provides the Board with a mechanism through which complaints can be investigated and/or conciliated. The DCAC is able to consider complaints that involve both treatment and fees charged for treatment. Where a complaint concerns fees section 41 of the Dentists Act sets out a list of specific matters that must be considered by the DCAC⁵². Where a matter cannot be resolved by the DCAC with the consent of the parties involved or there are issues which the DCAC considers should be brought to the attention of the Board, the Committee refers the matter back to the Board with a recommendation for action. As well as making recommendations with respect to fees and charges the DCAC can recommend that a practitioner be cautioned or reprimanded, or may make any other recommendation it considers necessary. The Board does not have to accept the DCAC's findings or recommendations and may in appropriate cases refer a matter for a disciplinary hearing notwithstanding the DCAC's successful conciliation of a complaint.

If this model were adapted for use under the Psychologists Act 1989, the Department proposes that the recommended two tier definition of misconduct be applied through a two tiered Board inquiry/Tribunal structure that incorporates a DCAC type body. If such a structure were adopted then complaints of unsatisfactory professional conduct would be considered by the relevant Board after investigation by the equivalent DCAC body, the HCCC or the Board's own inspector, and complaints of professional misconduct would be considered by the Tribunal. This would ensure that appropriate principles of natural justice are observed for serious matters that might involve deregistration.

If a DCAC type body was to be established within the legislation for the registration of psychologists the Department envisages it replacing PSCs on the basis that this structure provides a more flexible consumer claims oriented mechanism for less serious complaints. Matters requiring a hearing for unsatisfactory professional conduct would be conducted before the Board which is not legalistic or bound by the rules of evidence.

The Board would be able to make the following orders:

- ▶ counsel or reprimand the practitioner;

⁵² Under section 41, the Committee is to have regard to :

- ▶ the time occupied in performing and the nature of the dental treatment rendered;
- ▶ the distance between the consulting room or residence of the dentist and the place at which the dentist rendered the dental treatment;
- ▶ the hours of the day or night at which the dental treatment was rendered;
- ▶ the degree of skill, knowledge or experience required or given in rendering the dental treatment;
- ▶ whether the dentist rendered the dental treatment in the capacity of specialist, consultant or dentist in ordinary practice;
- ▶ what amount, if any, was paid by the dentist to any other person in respect of any dental prosthesis used in the dental treatment;
- ▶ any other matter which appears relevant to the Committee.

- ▶ order the practitioner to seek medical or psychiatric treatment or counselling;
- ▶ order the practitioner to undertake additional training;
- ▶ order the practitioner to seek advice on the management of their practice;
- ▶ order the practitioner to report on the status of their practice to the Board, or its nominee; and
- ▶ impose conditions on the practitioner's practice.

A practitioner who is aggrieved by a decision of the Board would be able to appeal by way of re-hearing to the Tribunal in all cases.

The Tribunal would be able to make all the orders available to the Board as well as suspend or de-register the practitioner.

Notwithstanding the fact that the Tribunal would hear complaints of professional misconduct it will be able to make a finding of unsatisfactory professional conduct.

In situations where the Board considers a complaint that a practitioner does not have sufficient physical or mental capacity to practice, it can recommend suspension or de-registration of the practitioner. In such a case the recommendation of the Committee must be referred to the Chair or Deputy Chair of the Tribunal who may make an order in the terms recommended by the Committee, or such other order regarding suspension or de-registration, as thought appropriate or impose any other protective order available to the Committee. This exception parallels section 63 of the Medical Practice Act.

Role of the Health Care Complaints Commission

In considering changes to the disciplinary structure it must be remembered that the Health Care Complaints Commission (HCCC) is the independent body created by the Health Care Complaints Act 1993 to receive and investigate complaints about health care providers and institutions. The HCCC must therefore have a role in whatever disciplinary structure is adopted.

If **option 1** were adopted, the role of the Commission would be based on the complaints handling process under the Medical Practice Act 1992. This would overcome the problem with the current Act which is noted in the Issues Paper, that the Board is not obliged to follow the recommendation of the HCCC in determining what action should be taken following investigation of a complaint. The paper considered that in determining whether to pursue a matter as unsatisfactory professional conduct or professional misconduct through a hearing, the Board and the Commission should consult on what action should be taken with the body that took the most serious view of a matter prevailing. There is general agreement among submissions that both the Board and the HCCC should be involved in determining what action should be taken.

If **option 2** were adopted in the legislation regulating psychologists the HCCC would have a role not dissimilar to the role it has under the current disciplinary system. The Board and the HCCC would continue to consult each other on the action to be taken regarding each complaint and if either body considers that a complaint requires investigation by the HCCC it must be so investigated. Decisions to refer matters to the Tribunal or Board for hearing following investigation by the HCCC would be made on a similar basis.

Where a complaint is referred to the Assessment Committee the Board would provide the HCCC with a copy of the Committee's recommendations and notify it of any action taken by the Board. As the Board is the relevant adjudicative body on complaints involving conduct that may constitute unsatisfactory professional conduct, there may be a perceived lack of transparency and a conflict in

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roles if the Board is able to dismiss a complaint that the Assessment Committee has recommended be the subject of an inquiry into unsatisfactory professional conduct. One option to overcome this problem might be that where the Committee recommends that the Board inquire into unsatisfactory professional conduct the Board must inquire into the matter or refer it to a Tribunal for hearing. In the interests of accountability, in such cases the Board would also be required to notify the HCCC of that action and give it the opportunity to make a written submission to the inquiry/hearing or in Tribunal matters actually conduct the prosecution.

The Department's Position

The Department has identified the two models for the purposes of further consultation with stakeholders. It is recognised that the second model has not been the subject of prior consultation. The single tiered disciplinary system canvassed in the issues paper is no longer supported because of the concerns raised by the Board and the HCCC concerning the potential for confusion and complexity to arise if such a body were to move between formal and informal hearings depending on whether matters were dealt with as unsatisfactory professional conduct or professional misconduct.

The Department recommends the second option primarily because it establishes a more consumer focussed and responsive complaints handling system. In particular, it allows for a broader range of complaint matters to be dealt with. In this regard, it is useful to contrast the utilisation of the DCAC with both the current system under the Psychologists Act 1989 and the PSC/Tribunal structure under the Chiropractors and Osteopaths Act. The Dental Board receives around 80 complaints each year and about 80% are referred to the DCAC for consideration.⁵³ By contrast the Psychologists Board over the period 1991/92 to 1997/1998 received 195 complaints however there were only 9 disciplinary hearings involving professional standards. Again for the seven reporting years 1991/2 to 1997/8 the Chiropractors and Osteopaths Registration Board which has the PSC/Tribunal structure received over 220 complaints and held only one PSC, with 10 matters being heard by the Tribunal.

Further, the experience of the Dental Board is that the DCAC performs a useful function for consumers, responds to claims in a prompt manner, and is a less costly alternative for consumers than pursuing legal action through the courts or tribunals. It represents an effective way of dealing with consumer complaints, the vast majority of which relate to the less serious end of the misconduct scale or to disputes as to whether consumers have received treatment of value.

Recommendation 12 -Revised disciplinary structure

That further consultation be undertaken during drafting of legislation to regulate the psychology profession on a revised disciplinary structure whereby:

- ▶ *An Assessment Committee will be established to consider and investigate complaints, referred from the relevant Board, regarding professional fees and standards of professional services. The Assessment Committee will be able to conciliate and investigate consumer complaints and to make recommendations to the relevant Board for the resolution of those complaints or any further action the Committee considers should be taken. When a Committee recommends that there be an inquiry into unsatisfactory professional conduct or professional misconduct the Board must conduct an inquiry or refer the matter to the Tribunal for a hearing.*
- ▶ *The relevant Board will hear complaints of unsatisfactory professional conduct following investigation of a complaint by an Assessment Committee, the Health Care Complaints Commission or the Board's own inspector.*
- ▶ *A Tribunal will be required to hear complaints of professional misconduct.*

7.4.5 Counselling

It is noted above that the Medical Practice Act 1992 enables the Board to direct that a practitioner the subject of a complaint attend the Board for counselling. While this is an appropriate means for dealing with complaints where the parties agree on the facts of a complaint, it is of little benefit in circumstances where a practitioner disputes the subject matter of a complaint. The HCCC has in other reviews argued that the provisions should be available in all circumstances, including in situations where a complaint has been investigated but no further action is warranted. However, it is questionable whether a practitioner should be subject to further disciplinary action for failing to attend counselling when the complaint has only been investigated, but not proved in a formal hearing. Further, this may amount to a denial of natural justice.

Both the disciplinary systems outlined above allow for counselling to occur following a hearing. Whichever system is adopted, the Department's view is that counselling should only be mandatory prior to a hearing in circumstances where the practitioner consents to attend for counselling. This can occur without the need for legislative amendments.

7.4.6 Power of Disciplinary Bodies to Fine Practitioners

The Department raised for discussion the issue of whether the fines that can be imposed by disciplinary bodies following a hearing should be increased. The current Act gives the Board the power to fine a practitioner a maximum of 50 penalty units (\$5,500). On review, the Department is of the view that this is a punitive power that is inconsistent with the protective jurisdiction exercised by the Board and its disciplinary bodies. The Department therefore recommends that the power be removed.

Recommendation 13

That the legislation be amended to remove the power of disciplinary bodies to fine practitioners following disciplinary hearings.

7.4.7 Practice Management

In dealing with matters of over-servicing, fee disputes or possible fraud, the Board has become aware that many problems have arisen because of inappropriate management of practices. In more serious cases where practitioners exploit the imbalance of information between patient and practitioner, penalties can be imposed such as fines, suspension or deregistration. However, where the problem arises from inappropriate management, the Board is currently limited in its ability to ensure that the problem is rectified. The Board's recommendation for a power to be included to enable disciplinary bodies to direct a practitioner take advice on the management of their practice is supported to overcome this problem.

Recommendation 14

That the legislation be amended to provide that disciplinary bodies may order that a practitioner take advice on the management of their practice if a complaint is proved.

7.5 Referral of criminal conduct, negligence and other matters to the Board

The Issues Paper considered whether certain bodies, such as courts and the Coroner, should be required to refer matters disclosing potential misconduct, such as criminal convictions, to the Board for consideration. Self reporting by practitioners at registration was also raised as an option to improve efficiency of reporting processes.

There is general support among submissions for the concept of mandatory referral of criminal conduct by the Courts noting that this will enable a review of the practitioner's fitness for continued practice. Support was also expressed for notification arrangements for hospitals (where a patient is admitted as an involuntary patient under the Mental Health Act 1990), the Coroner (when satisfied there is evidence which indicates a complaint could be made under the Act) and Royal Commissions (when satisfied there is sufficient evidence to support a complaint being made). Such matters would be deemed a complaint. Overall it is noted that consumers would have greater assurances that practitioners are competent.

There was also support for the notification of complaints by Courts from civil proceedings. However as canvassed in the Issues Paper, the main difficulty with such a requirement is that notification at the finalisation of a hearing may not be of much assistance given the delays experienced in litigation. Many argued a strong public policy argument for links to be established between the tort system and disciplinary process so that incompetent practitioners can be identified. However, the Department considers the practical difficulties prevent such an amendment at this time, although other bodies could be prescribed by regulation.

Recommendation 15

That the legislation be amended to provide for the mandatory referral of criminal convictions and other prescribed matters to the Board.

7.6 Self Notification of Criminal Convictions and other serious matters

A criminal conviction may be grounds for deregistration where it affects the practitioners ability to practice psychology. It is therefore imperative that the Board has available to it at the time of initial registration, at renewal and at other times during the year information so that it can determine whether a practitioner is an appropriate person to remain on the register. During 1998, the Department sought the views of all registration boards and the Health Care Complaints Commission on expanded arrangements for the notification of possible criminal conduct to the Board. The Department proposed the following:

- ▶ that applicants for registration and renewal be required to make declarations regarding criminal conduct at the time of seeking registration;
- ▶ that registrants be required to notify the Board within seven days of criminal conduct.

The information to be provided under these recommendations would include criminal convictions, criminal matters found to be proved but no conviction recorded under section 556A of the Crimes Act 1900 and charges for serious sex or violence offences where the allegations relate to conduct occurring in the course of practice. A serious sex or violence offence would mean an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence that would be punishable by imprisonment for 12 months or more.

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A criminal charge would not of itself form the basis for disciplinary action. Rather the charge and the circumstances surrounding it can be relevant to a practitioner's overall ability to practise and to questions of character. The obligations are consistent with those imposed on employees under the Health Services Act 1997.

In addition to the notification requirements for criminal conduct the Department has during the review of other health professional registration legislation identified the need for notification requirements for other events which could be considered either during the registration process or through disciplinary action. The additional requirements include serious illness during the previous twelve months (which may highlight the need for action under impairment provisions) and misconduct in foreign jurisdictions. The introduction of similar requirements for psychologists is supported.

Recommendation 16

That the legislation be amended:

- ▶ *to require applicants for registration (including applicants for re-registration) to make declarations regarding criminal convictions, offences proved but dealt with under s556A, and serious, sex or violence offences where the allegations relate to conduct occurring in the course of practice, disciplinary action in foreign jurisdictions and serious illness during the previous twelve months;*
- ▶ *to require practitioners to notify the relevant registration board if they are convicted of an offence reportable to the courts or if they are charged with a serious sex or violence offence where the allegations relate to conduct which occurred in the course of practise.*

7.7 Establishment of a system for dealing with impaired practitioner

The Issues Paper considered the establishment of a less formal, rehabilitative system for dealing with impaired practitioners. This system would be modelled on the existing provisions of the Medical Practice Act. Such matters are referred to a panel who can counsel the practitioner, refer the matter back to the Board for disciplinary action or recommend the practitioner voluntarily consent to restrictions on practice. Submissions on the costs and benefits of such a system were sought.

There is general agreement among submissions for a system based on the Medical Practice Act highlighting the benefits of such a system including the following.

- (i) the non-punitive nature of the system encourages practitioners to self report or report others before patients are injured reducing costs;
- (ii) the costs involved with referring a practitioner to a panel are much less than those involved with investigation and disciplinary action; and
- (iii) the benefits for consumers because they have an assurance that practitioners have sufficient capacity to practise.

Recommendation 17

That the legislation be amended to provide for the establishment of a system to deal with impaired practitioners (in conjunction with the complaints handling process) as provided for under the Medical Practice Act 1992.

7.5 Other Amendments to Disciplinary Provisions

A range of other amendments which do not have an impact on competition were canvassed in the Issues Paper, and following consideration of submissions are supported by the Department. These include the following amendments:

- ▶ to establish a process for the review of deregistration orders following disciplinary action based on the provisions of the Medical Practice Act 1992;
- ▶ to provide that the Board may direct a practitioner the subject of a complaint to undergo a medical or other clinical examination;
- ▶ to provide that a complaint may be withdrawn once an investigation or disciplinary action has commenced, following consultation between the Board and the HCCC;
- ▶ to provide disciplinary action may be taken or continued against a practitioner where they cease to be registered.

8. OTHER CONSIDERATIONS ARISING UNDER THE COMPETITION PRINCIPLES AGREEMENT

8.1 Maintenance of Professional Standards - Continuing Competency

One of the primary objectives of the Act is to provide consumers with information about the ongoing competence of registered professionals. While this objective can be achieved through the setting of registration requirements and the disciplinary system, many have argued, including the HCCC, Royal Commission into Deep Sleep Therapy and the Australian Psychological Society, this could be further enhanced through introduction of requirements for:

- ▶ mandatory continuing education (MCE); and/or
- ▶ annual competency assessment of registrants.

The Issues Paper did not support the introduction of continuing competency assessment on the basis that the complaints system is sufficient to monitor ongoing competence of practitioners. Most submissions argued that there is no need for such a system noting it would be impractical given the diverse areas of practice of professionals. While some advocated the need for competency assessment to ensure that standards are maintained, no matters resulting in disciplinary action have involved lack of competence. The cost of annual competency assessment cannot be justified.

A number of submissions argued participation in continuing education should be a requirement for re-registration. Such a requirement, it is said, ensures that practitioners maintain their standards. The Issues Paper noted that such a requirement should only be introduced where there is a problem with professionals failing to maintain standards as there is little point in making participation in continuing education mandatory where professional associations and professionals already recognise their professional responsibilities

A substantial number of submissions support MCE, arguing that the rapid rate of change and the need for consumer information justifies such a system. However, none of the submissions demonstrated that practitioners are currently ignoring their responsibilities. Contrary to this position, a large number of submissions that supported continuing education in principle opposed making it mandatory for various reasons including: cost and lack of access for rural/remote practitioners.

On balance, the Department is of the view that mandatory continuing education should not be made a requirement for re-registration. The issue of access and equity is significant in this regard. However, at present consumers have no means of determining whether practitioners seek to maintain skills at an appropriate level, particularly when in private practice. It is therefore proposed that the Act be amended to enable the Board (or a committee) to develop guidelines on voluntary continuing education. Practitioners that meet the minimum number of hours for accreditation could then advertise that they have met the Board's guidelines for continuing education in the previous year. This would ensure that consumers have access to information, without the adverse impacts identified in submissions. This approach has recently been proposed in Queensland for all health professionals.

To raise awareness of the importance of continuing education activities, it is also proposed to require registrants to provide the Board with details of continuing education activities undertaken in the previous twelve months at renewal time.

By operating on a voluntary basis, the system would not lead to the exclusion of practitioners from the market with the potential for adverse impacts on competition. While practitioners would incur costs of participating in the system, the Department is of the view that these are offset by the benefits to consumers through the availability of information to assist them in making informed decisions regarding practitioners.

While professional associations are able to carry out this role, many registered practitioners are not members of such bodies. In the absence of the voluntary system, consumers would have no means of establishing whether practitioners who are not members of professional associations have sought to maintain the skills at an appropriate level.

Recommendation 18

That the Act provide for a system of voluntary continuing education on the basis it will have significant benefits for consumers by providing additional information and will further achieve the objectives of the legislation

8.2 Education and Research Account

Within the Issues Paper, consideration was given to the inclusion in the Act of provisions to allow the Board to establish an Education and Research Account (ERA). This account would give the Board the opportunity to develop areas of practice in the profession, to conduct research into problem areas, to facilitate new directions in education and training, and to fund education programmes for the profession and, to some extent, the consuming community.

Despite the presence of such benefits, there may be a potential negative impact of funding the ERA, via a compulsory levy attached to professional registration, on competition in the profession. That is, funding the ERA in this manner may reduce competition by:

- discouraging practitioners, professional associations or other parties from undertaking additional education and research, thereby potentially reducing innovation in the practice and application of psychology; and
- imposing costs on individuals for which they do not consider they receive an adequate benefit.

Nonetheless, the benefits from establishing the ERA are expected to outweigh the potential limiting effects on competition within the profession. Submissions received on the Issues Paper also support establishing an ERA, with some suggesting that there may be a need to be more vigilant in the area of containing costs of research and education.

An additional strong justification arises if current investment and funding mechanisms within the profession are found to be deficient and warranting of legislative intervention. A report prepared by a Working Group for the National Committee for Psychology of the Australian Academy of Science (1996) found this to be the case in a number of areas related to research in psychology. More specifically it found there to be a general need for an increase in industry and professional collaboration in conducting and disseminating research, and a change in funding and investing in research in order to establish more longitudinal psychological studies and larger databases of psychological information.⁵⁴

These findings not only relate to the professional registration boards, which is the principal subject of the Act, but to academia, industry, health science and other research areas.

Recommendation 19

That the Act provide for the establishment of an education and research account.

8.3 Record Keeping and Storage

Sound record keeping practices are essential to provide optimal patient care. Further, the maintenance of confidentiality of patient notes is an important issue in the storage of records. The introduction of such a power will ensure that proper standards are observed. Further, it will assist in the conduct of investigations by the HCCC who will be able to accurately determine whether further action is warranted in specific cases.

Such a system may result in compliance costs for practitioners. However, in developing the standards, a regulatory impact statement would need to be prepared to identify the costs and benefits of any standards.

The issue of patient access to records was also identified for consideration in light of the recent court case of *Breen v Williams*. Submissions were divided on the issue of whether a statutory right of access to records should be included in the Act. While such a provision would ensure consistency of approach between the private and public sector - records are already available when prepared in the public sector - the Department is of the view that the issue of access to records should be dealt with in a consistent manner for all professions. This is more appropriately considered separately from any review of legislation covering a particular profession.

Recommendation 20

That the Act provide for a regulation making power to enable standards to be set for the making and storage of records.

9. MISCELLANEOUS AMENDMENTS

9.1 Composition of the Board

The Department is of the view that the Board should be reconstituted with an additional consumer representative but without the medical practitioner. It is no longer considered appropriate to require a medical practitioner to be represented on a Board that provides for registration of an independent professional group. Any medical expertise that is required in the course of exercising the Board's function can be sought on a needs basis. Additional consumer representation will enhance the independent standing of the Board.

Further, it is also proposed that amendments be made to alter the process for the nomination of psychologist members of the Board. At present five psychologists are appointed to the Board by the Governor - three are nominated directly by the Australian Psychological Society, and two by the Minister. One of the Ministerial nominees must hold a position at a NSW University or other recognised tertiary institution. A significant number of registered psychologists are not members of the APS. Although some submissions suggested that only about 40% of registered psychologists were members of the APS - memberships statistics by the APS suggest that it is around 54%. In any case, there are a number of other professional associations that do not directly nominate members of the Board.

The proposed amendment will make the process for appointing psychologist members fairer to other professional associations. Given that board members are not there to represent specific interests and they have a duty to serve the interests of the Board, it is not appropriate for the APS to directly nominate three members. It is proposed, therefore that the legislation provide that the Minister seek nominations from professional associations, Government Departments, universities and other interested parties and then appoint: (i) three psychologists at least one of whom should be a psychologist employed by a Government agency and one being a psychologist in private practice; (ii) a psychologist holding a position at a university; and (iii) one other person registered as a psychologist in NSW who is a member of the APS. Although only one position is reserved for the APS member, it will not prevent such members holding the other psychologists positions on the Board.

It is also proposed to limit board members to serving only three, three-year terms. This will ensure that new members of the Board are appointed on a regular basis thus contributing new ideas in relation to the exercise of the Boards functions.

Recommendation 21

That the legislation be amended to:

- ▶ *replace the medical practitioner with a person to represent the interests of consumers;*
- ▶ *alter the process for the nomination of psychologist members to the Board so that an appropriate mix of professionals is represented;*
- ▶ *limit to three the number of three year consecutive terms which may be served by Board members.*

9.2 Other Amendments

The following amendments were canvassed in the Issues Paper, and following review of submissions,

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are supported by the Department:

- ▶ An increase in penalties for breach of the Act to \$ 5,000.
- ▶ To provide for the appointment of an inspector with appropriate powers to obtain search warrants.
- ▶ To change the title “secretary” to “registrar”.
- ▶ To provide that both a business address and residential address must be recorded in the register, with limits on the release of residential addresses to the public.

Legislative Review Requirements under the Competition Principles Agreement

Guiding Principles of the Review

The Competition Principles Agreement provides that the guiding principles of each review are that “legislation should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restrictions to the community as a whole outweigh the cost; and
- b) the objectives of the legislation can only be achieved by restricting competition.” (clause 5(1), CPA)

Content of the review

“Without limiting the scope of the individual review, each review should:

- a) clarify the objectives of the legislation;
- b) identify the nature of the restriction on competition;
- c) analyse the effect of any identified restriction on competition on the economy generally;
- d) assess and balance the costs and benefits of the restrictions;
- e) consider alternative means for achieving the same results including non legislative approaches.” (clause 5(9), CPA)

Public benefits

“Without limiting the matters that may be taken into account, where this Agreement calls:

- a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- b) for the merits or appropriateness of a policy or course of action to be determined;
- c) or for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant be taken into account:

- d) government legislation and policies relating to ecological sustainable development;
- e) social welfare and equity considerations, including community service obligations;
- f) government legislation and policies relating to matters such as occupation health and safety, industrial relations and access and equity;
- g) economic and regional development, including employment and investment growth;
- h) the interests of consumers generally or a class of consumers;
- i) the competitiveness of Australian businesses; and
- j) the efficient allocation of resources.” (clause 1(3) CPA)

Submissions

| Name | Association |
|--|--|
| 1. <i>Dr Jusuf Hariman</i> | |
| 2. <i>Philip A Webb, Psychologist</i> | <i>College of Psychological Practice</i> |
| 3. <i>Dr Margaret Tobin, Director, Area Mental Health</i> | <i>South Eastern Sydney Area Health Service</i> |
| 4. <i>Ms Maureen Tangney, Acting Executive Member</i> | <i>Privacy Committee</i> |
| 5. <i>J Dent, Executive Director</i> | <i>Nurses Registration Board</i> |
| 6. <i>Loray Dudley, Director, Executive Unit</i> | <i>Northern Sydney Area Health Service</i> |
| 7. <i>Sylvia Adcock</i> <i>Phil Renner, Senior Psychologists</i> <i>Leanne Bridgeford,</i> <i>Rosemary Clancy</i> <i>Jennifer Jones</i> <i>Jordi Austin</i> <i>Jeff Amin</i> <i>Kath Craft</i> <i>Sarah Lam</i> <i>Christina D'Arcy, Clinical Psychologists</i> | <i>Campbelltown Mental Health Service</i> |
| 8. <i>Marion Whalan, Acting Manager Human Resources</i> | <i>Greater Murray Health Service</i> |
| 9. <i>David M Cockram, Post Graduate Diploma in Psychology student</i> | |
| 10. <i>Mark Brandon, State Manager</i> | <i>Health Insurance Commission</i> |
| 11. <i>Dr Diana G Horvath, Chief Executive Officer</i> | <i>Central Sydney Area Health Service</i> |
| 12. <i>A Lewis for Janet Good, General Secretary</i> | <i>Public Service Association of New South Wales</i> |
| 13. <i>Renate Wagner, Phd, Clinical Psychologist</i> | <i>Bankstown/Lidcombe Community Health Service</i> |
| 14. <i>Lynleigh Evans, Executive General Manager, Health Services</i> | <i>Medical Benefits Fund of Australia Limited</i> |
| 15. <i>Imelda Dodds, National President</i> | <i>Australian Association of Social Workers Ltd</i> |
| 16. <i>Jill Davidson, President</i> | <i>Australian Association of Social Workers Ltd</i> |
| 17. <i>Gillian Church, Executive Officer</i> | <i>NSW Association for Mental Health Inc</i> |
| 18. <i>Eleanor Davidson, Director of Student Welfare</i> | <i>NSW Department of School Education</i> |
| 19. <i>Nicholas Marosszeky, Registered Psychologist</i> | |
| 20. <i>Paul Naylor, Executive Director</i> | <i>The Health Services Association of NSW</i> |
| 21. <i>Robyn Vines, Chairperson</i> | <i>College of Clinical Psychologists (NSW Section), Australian Psychological Society</i> |

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| | <i>Ltd</i> |
| 22. <i>Kevin McConkey, Professor and Head of School</i> | <i>The University of New South Wales</i> |
| 23. <i>Roderick Power, Associate Professor of Psychology Head, School of Behavioural Sciences</i> | <i>Macquarie University</i> |
| 24. <i>John Shea, President</i> | <i>Australian College of Private Consulting Psychologists</i> |
| 25. <i>Sue Hardman, Secretary</i> | <i>Physiotherapists Registration Board</i> |
| 26. <i>Professor Paul Armitage, Psychologist</i> | <i>University of Sydney</i> |
| 27. <i>Stephen Wigley, Director Department of Psychology</i> | <i>Central Coast Area Health Service</i> |
| 28. <i>John Franklin, Clinical Psychologist, Senior Lecturer, Psychology Department</i> | <i>Macquarie University</i> |
| 29. <i>Lionel Davis, Registered Psychologist, Executive Director</i> | <i>Australian College of Applied Psychology</i> |
| 30. <i>Peter Hutten, Secretary</i> | <i>Wollongong Health Consumers Advisory Group</i> |
| 31. <i>Ken Miller, Acting Chief Executive Officer</i> | <i>Northern Rivers Health Services</i> |
| 32. <i>Bruce Crowe, President Alison Garton, Executive Director</i> | <i>The Australian Psychological Society Ltd</i> |
| 33. <i>Irene Moss, Ombudsman</i> | <i>NSW Ombudsman</i> |
| 34. <i>Andrew Allan, Honorary Secretary</i> | <i>Medical Consumers Association of NSW</i> |
| 35. <i>Peter Frenidin, Acting Director of Community Health Services on behalf of the CEO</i> | <i>Macquarie Area Health Service</i> |
| 36. ? | |
| 37. <i>E P Milliken, Secretary</i> | <i>Federation of Organisation of Privately Practising Psychologists of Australia</i> |
| 38. <i>Michael Young, Chair, National Executive</i> | <i>College of Clinical Psychologists, Australian Psychological Society</i> |
| 39. <i>Peter Procopis, Executive Director</i> | <i>The New Children's Hospital</i> |
| 40. <i>Helen Wilson, Executive Director</i> | <i>NSW Association of Occupational Therapists</i> |
| 41. <i>Peter Bioletti</i> | <i>Kiama District Health Watch</i> |
| 42. <i>T M Hamilton, Chief Executive Officer</i> | <i>Wentworth Area Health Service</i> |
| 43. <i>Robert Gore, Chief Executive Officer</i> | <i>Mid North Coast Health Service</i> |
| 44. <i>P J Johnston, Deputy Registrar</i> | <i>New South Wales Medical Board</i> |
| 45. <i>Lesley Burnett, Psychologist Joan Bratel, Psychologist Ed McNeeney, Psychologist Julie Braithwaite, Intern Psychologist</i> | <i>The Spastic Centre</i> |
| 46. <i>Bruce McLean, Acting Chief Executive Officer</i> | <i>New England Health</i> |
| 47. <i>Sue Henderson, State President</i> | <i>Australian Guidance and Counselling Association Ltd</i> |

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| 48. | <i>Ross Colquhoun, President</i> | <i>National Association of Alcohol and Drug Abuse Counsellors, Aust Inc</i> |
| 49. | <i>Trevor Waring, President</i> | <i>Psychologists Registration Board</i> |
| 50. | <i>Tom Benjamin, Psychologist</i> | |
| 51. | <i>Judith Kennedy, Psychologist</i> | |
| 52. | <i>Merrilyn Walton</i> | <i>Health Care Complaints Commission</i> |
| 53 | <i>Helen Disney</i> | <i>Relationships Australia</i> |
| 54 | | <i>Citizens Commission on Human Rights</i> |
| 55 | <i>Mr Barry Hart</i> | <i>Chelmsford Victims Action Group</i> |
| 56 | <i>William Pitty</i> | <i>Professional Psychotherapy Centre</i> |
| 57 | | <i>NSW Council for Intellectual Disability</i> |
| 58 | <i>Dr C Gonsalvez</i> | <i>Department of Psychology, University of Wollongong</i> |
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Summary of Legislation regulating the psychology profession in Australia and New Zealand

| | Register | Board | Restricts use of title | Restricts practice | Complaints investigated by: | Discipline carried out by: | Restricts advertising: | Specialist register |
|------------|-----------------|--------------|-------------------------------|---------------------------|------------------------------------|-----------------------------------|-------------------------------|----------------------------|
| NSW | Yes | Yes | Yes | No | HCCC (1) | Board/ PSC(2) | Yes | No |
| NZ | Yes | Yes | Yes | No | HDC/ CAC(3) | Board | Yes | No |
| VIC | Yes | Yes | Yes | Partial (4) | Board | Board | Yes | Yes |
| SA | Yes | Yes | Yes | Partial (5) | Board | Board | Yes | No |
| NT | Yes | Yes | Yes | Yes | Board | Tribunal | Yes | No |
| QLD | Yes | Yes | | | | | | |
| ACT | Yes | Yes | Yes | Yes | Board | Board | Yes | No |

(1) Health Care Complaints Commission

(2) Professional Standards Committee

(3) Health and Disability Commissioner\Complaints Assessment Committee

(4) Unregistered persons may not use a prescribed test, however, no tests are prescribed at present. Hypnosis was restricted but this prohibition recently sunsetted in 1997

(5) Prohibits IQ testing and personality testing by unregistered persons. Hypnosis by unregistered persons prohibited.

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Appendix D

Summary of Complaints

| | 90/91 | | 91/92 | | 92/93 | | 93/94 | | 94/95 | | 95/96 | | 96/97 | | 97/98 | |
|--|----------|---|----------|---|----------|----|----------|----|----------|----|----------|----|----------|----|-------------|---|
| Total Complaints reported to PRB/HCCC | - | 8 | 36 | 9 | 17 | 15 | 14 | 13 | 25 | 34 | 24 | 13 | 40 | 27 | 39 | - |
| Breach of confidentiality | | | | | | | 5 | | 5 | | 2 | | 2 | | 3 | |
| Fee related | | | | | | | 1 | | 1 | | 2 | | 2 | | 3 | |
| Sexual relation with client | | | | | | | 2 | | 2 | | 5 | | 12 | | 7 | |
| Inadequate case management/treatment | | | | | | | 0 | | 5 | | 9 | | 15 | | 17 | |
| Sexual behaviour | | | | | | | 1 | | 1 | | 0 | | - | | - | |
| Questionable accuracy/quality of report | # | | # | | # | | 0 | | 3 | | 3 | | 6 | | 5 | |
| Insensitive treatment | | | | | | | 0 | | 2 | | 4 | | 1 | | 1 | |
| Fraud | | | | | | | 1 | | 0 | | 1 | | - | | 2 | |
| Professional Conflict | | | | | | | 1 | | 1 | | 2 | | - | | 1 | |
| Impairment | | | | | | | - | | - | | - | | 1 | | - | |
| Unethical Relationship | | | | | | | - | | - | | - | | 1 | | - | |
| Other | | | | | | | - | | - | | - | | 1 | | - | |
| Board/PSC disciplinary hearings - completed | 0 | | 0 | | 0 | | 0 | | 1 | | 3 | | 1 | | 4(2) | |

1. Complaints reported by the HCCC are generally included with the number of complaints notified by the Board. The only exception is 94/95 where different reporting procedures appear to have been adopted.
- # Not reported