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CENTRE FOR
INTERNATIONAL
ECONOMICS

*NCP review of the
Northern Territory
Hospital Management
Board Act*

Prepared for Territory Health Services

FINAL REPORT

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Executive summary and recommendations

THE REVIEW OF THE *HOSPITAL MANAGEMENT BOARDS ACT* is one of 12 reviews being undertaken of the Northern Territory's health legislation under National Competition Policy (NCP) requirements. Steps to be followed in an NCP review are to:

- clarify the objectives of the legislation;
- identify the nature of every restriction on competition;
- analyse the likely effects of the restrictions on competition and on the economy generally;
- assess the balance between the costs and benefits of the restrictions; and
- consider alternative means of achieving the same results including nonlegislative approaches.

There are no objectives specified in the act. The objectives of the act are seen as to ensure local community involvement in the running of the Northern Territory's hospitals while enabling the government to check on matters of finance, staffing and governance within the public hospitals. The act is regarded as advisory only.

There is no need for the act to be revised in any way to make it compliant with NCP. That said, there do not appear to be strong reasons for continuing with the act. The so-called management boards authorised under the act are not empowered to manage public hospitals – in fact, they are specifically prevented under the act from making management decisions on key matters determining hospital performance such as financial management.

Internal procedures rather than legislation could be used to achieve the functions of the boards. However, a continuation of current arrangements with the act is not costly, nor is it detrimental to hospital performance. With the act not imposing any restrictions on competition, we make no recommendation as to whether the act should stay or go. We draw

attention to the issue of constraints on public hospitals from using their resources to provide services on a commercial basis to customers. It is likely that these constraints reduce efficiencies and add to costs for both the hospital and its potential customers to the detriment of the community as a whole.

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Introduction

THE CENTRE FOR INTERNATIONAL ECONOMICS (CIE), a private economic research consultancy, in conjunction with Desliens Business Consultants has been commissioned by Territory Health Services to undertake an independent review of the *Hospital Management Boards Act* in accordance with the principles for legislation review set out in the Competition Principles Agreement (CPA) entered into by all members (Commonwealth, states and territories) of the Council of Australian Governments in 1995. The review forms part of the Northern Territory government's obligation under the CPA to review and, where appropriate, reform all laws that restrict competition by the year 2000. Legislative reviews along National Competition Policy (NCP) lines are currently being undertaken of health and health related acts in other states. The Commonwealth is also conducting NCP reviews of its health legislation.

The *Hospital Management Boards Act* is one of 12 Northern Territory health acts to be reviewed (box 1.1).

In undertaking this review we conducted an initial round of consultations with stakeholders, including officers of Territory Health Services. We then prepared an issues paper to assist interested parties prepare submissions to the review and to facilitate further consultation. The issues paper concluded that the act in its present form is compliant with NCP principles. There was therefore no need to proceed further with the NCP review framework, which involves assessing the effects of restrictions, determining the balance between benefits and costs, and analysing alternative, less restrictive ways of achieving objectives.

We noted in the issues paper that the review process, while it has established that the act does not contain any components which can be construed as restricting competition, provides a timely opportunity to reconsider the purpose of the *Hospital Management Boards Act* and whether it should continue to operate in its present form. This issue is addressed in this report.

1.1 Acts to be reviewed

- ***Hospital Management Boards Act***
- *Dental Act*
- *Optometrists Act*
- *Radiographers Act*
- *Community Welfare Act*
 - Community Welfare Regulations
 - Community Welfare (Childcare) Regulations
- *Health Practitioners and Allied Professionals Registration Act*
- *Nursing Act*
- *Mental Health and Related Services Act*
- *Public Health Act*
 - Public Health (Barber's Shops) Regulations
 - Public Health (Shops, Eating Houses, Boarding Houses, Hotels and Hostels) Regulations
- *Medical Act*
- *Private Hospitals and Nursing Homes Act*
- *Medical Services Act*

2

NCP principles

UNDER THE CPA, nearly 2000 pieces of Commonwealth, state and territory legislation are being reviewed over a six year period. The guiding principle behind these reviews and the reforms that follow them is that legislation (encompassing activities of authorities set up under that legislation and any regulations, rules, etc. authorised under it) should not restrict competition unless it can be demonstrated that the:

- benefits of the restriction to the community as a whole outweigh the costs; and
- objectives of the legislation can only be achieved by restricting competition.

It is significant to note that *both* of these criteria are required to be met if a restriction is to be retained. This means that even if a restriction passes a net public benefit test, it should not be retained if there are other less restrictive ways of achieving that outcome. Also, if a restriction is to be retained it is necessary to demonstrate that to keep it will result in a public net benefit. It is not sufficient to demonstrate that its removal would result in no or little net benefit.

It is important when assessing the benefits and costs of a restriction that distinctions are made between private benefits and costs, industry benefits and costs and community-wide benefits and costs.

The CPA does not define how any piece of legislation should be reviewed. However, it does state that, without limiting the issues that can be addressed, it should:

- clarify the objectives of the legislation;
- identify the nature of every restriction on competition;
- analyse the likely effects of the restrictions on competition and on the economy generally;
- assess and balance the benefits and costs of the restrictions; and

- consider alternative means of achieving the same results including nonlegislative approaches.

The CPA lists a range of public interest issues that are to be taken into account where relevant in assessing the benefits and costs of any restrictions. These include:

- ecological sustainability;
- social welfare and equity;
- occupational health and safety;
- industrial relations and access and equity;
- economic and regional development including employment and investment growth;
- interests of consumers;
- competitiveness of Australian businesses; and
- efficient resource allocation.

Thus, NCP recognises that unrestricted competitive markets may not result in best community outcomes. However, the NCP and the legislative review process is underpinned by the view that free interactions between consumers and producers result in broadly based benefits throughout the community.

This does not mean that fewer rules and restrictions would necessarily be better. Competition itself cannot operate outside a framework of trust which is underpinned by general commercial, industrial, health and safety, and environmental laws. Some features of these laws themselves restrict actions that are deemed to undermine the operations of an efficient competitive economy.

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The legislation and its objectives

THE LEGISLATION WAS ORIGINALLY INTRODUCED in the parliament in 1979. It replaced the then hospital advisory boards with hospital management boards established under the act.

The act does not contain any written objectives. From the second reading speech of the Minister, two objectives of the legislation can be inferred. The first is to fulfill a government promise to ensure more local community involvement in the running of Northern Territory hospitals. The second is to enable the government to check on matters of finance, staffing and government in the public hospitals given that hospitals are major consumers of public funds and are important players in the public sector.

The act is regarded by those in both the hospitals and Territory Health Services as advisory only. Although it has management boards in its title, it is really an act about hospital advisory boards. The issue of where to draw the line between an advisory board and a board with management powers was of concern at the time the bill was introduced. In his second reading speech, the Minister noted that the powers in the bill detailing the functions of the board may not be regarded by some as going far enough. The Minister was of the view that the bill gave the maximum authority possible to the boards, having regard to the government's responsibility to the community as a whole for the expenditure of its money and the control and management of the Northern Territory public service.

The Northern Territory has five public hospitals covered by the act (table 3.1.).

3.1 Public hospitals covered by the act

<i>Hospital</i>	<i>Authorised beds 1998-99</i>	<i>Total separations 1996-97</i>	<i>Bed utilisation 1996-97</i>
	No.	No.	%
Royal Darwin	295	25 362	93
Alice Springs	160	15 901	89
Katherine	60	3 496	65
Tenant Creek	20	1 481	62
Gove	30	2 076	69

Source: Territory Health Services annual reports (1996-97 and 1998-99).

As indicated in table 3.1, demand for hospital services in the Northern Territory is strong. In 1998-99 the Northern Territory had 341 separations per 1000 population compared with 291 separations per 1000 population in the rest of Australia.

What the act does

The act establishes a board (to be known as a hospital management board) for each hospital. The composition of the board is specified in the act (eight members: one is the hospital manager, one is the medical practitioner with prime responsibility for providing medical services at the hospital, one is the person in charge of nursing services at the hospital and five are appointed by the Minister). This means that the Minister has considerable discretion to shape the composition of the board.

The act specifies procedural issues to do with the appointment, removal and protection of board members (removal of personal liability for board actions carried out in good faith), handling of conflicts of interest, meetings and meeting procedures.

The act specifies the functions of the board in relation to the hospital for which it is appointed as follows.

- To give directions and offer advice, not inconsistent with the *Public Sector Employment and Management Act* or the *Financial Management Act* or the directions of the Minister, to the manager of the hospital with respect to any matter relating to the operation of the hospital.
- To fix and supervise the standards of service provided by or through the hospital.
- To advise and make recommendations to the Minister on any matter relating to the operation of the hospital, including the needs of the hospital in relation to its future development.
- To coordinate the use of resources in the hospital.
- To raise money and spend out any money raised for such uses in the hospital as are approved by the Minister.
- To accept and receive money donated to the hospital and spend and pay out money donated for uses in the hospital.
- To maintain liaison with other persons or bodies in the area served by the hospital.

The act makes it clear that the boards have no powers to give directions in relation to the recruitment, management and discipline of staff and the financial management of the hospital. The manager of the hospital in turn is required to consider any advice and comply with any directions given by the board with respect to any of the above functions.

The act enables the board to make to the Minister or the manager of the hospital recommendations concerning complaints made to it about hospital operations and services. The board must also ensure that the hospital is inspected at such times and by such members as it, from time to time, approves. One of the inspections is to be made in the presence of the Chief Executive Officer as defined in the *Public Sector Employment and Management Act* or a person appointed by the departmental head.

Each board is required to submit to the Minister by end-September each year a report on its operations and the operations of the hospital. The report must in turn be tabled in the parliament.

4

Nature of restrictions on competition

ALL LEGISLATION REGULATES BEHAVIOUR in some way, but not all regulation necessarily restricts competition. The National Competition Council (NCC), the Commonwealth body set up to advise on progress in meeting NCP obligations, has suggested seven ways in which regulation might restrict competition (NCC, *Legislation Review Compendium*, April 1997, p. 4). According to the NCC, legislation could restrict competition if it:

- governs the entry and exit of firms or individuals into or out of markets;
- controls prices or production levels;
- restricts the quality, level or location of goods and services available;
- restricts advertising and promotional activities;
- restricts price or type of input used in the production process;
- is likely to confer significant costs on business; or
- provides advantages to some firms over others by, for example, sheltering some activities from pressures of competition.

The review is required to identify the *nature* of restrictions in the act which limit competition.

The current act complies with NCP principles

The act does not contain any components that can be construed as restricting competition. The act in its present form is compliant with NCP principles.

5

The future for the Hospital Management Boards Act

THE ACT IN ITS PRESENT FORM, despite its name, is in practise overwhelmingly of an advisory nature. Board members are not empowered to exert a managerial role over hospital functions to influence its performance to any significant extent. Nor are they in a position to do so. Board members receive voluminous information on hospital matters just before each board meeting. It is physically impossible for them to digest this material within the time and use it to make informed decisions of a managerial nature. And the act specifically excludes the board from making management decisions on key matters determining hospital performance such as financial management.

There are no strong grounds with continuing with the act. Each of the functions listed for it could be achieved by procedures rather than by legislation. That said, the continuation of the act in its present form does not impose significant costs on the public hospital system. The boards, even though they are advisory, provide a useful role in improving information flows between the community, the hospital and the parliament, and within each hospital. And the provision allowing the hospital to raise, accept and spend money for uses in the hospital provides a means of enhancing facilities of the hospital independent of government budgets.

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Other matters

A NUMBER OF PERSONS raised in consultations the issue of constraints imposed through government policy directives on public hospitals selling commercial services to other hospital users and consumers. A prominent example concerns the in-house laundry service at Royal Darwin Hospital (RDH). The adjoining private hospital would like the opportunity to purchase its laundry services from RDH. But government policy requires the private hospital to seek out private (and perhaps less convenient and higher cost) service providers. As a result, RDH is denied an opportunity to make more efficient utilisation of its facilities and additional costs may be imposed on potential users of some services that the hospital could provide.

Arrangements consistent with competitive neutrality principles should be designed to allow for the public hospital to compete with other providers to supply such services.

Appendix

Terms of reference

THE REVIEW OF THE LEGISLATION shall be conducted in accordance with the principles for legislation review set out in the Competition Principles Agreement. The underlying principle for the review is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Without limiting the scope of the review, the review is to:

- clarify the objectives of the legislation, clearly identifying the intent of the legislation in terms of the problems it is intended to address, its relevance to the economy and contemporary issues and whether or not the legislation remains an appropriate vehicle to achieve those objectives;
- identify the nature of the restrictions to competition for all relevant provisions of the specified legislation. This analysis should draw on the seven ways identified by the National Competition Council in which legislation could restrict competition, which include:
 - governs the entry or exit of firms or individuals into or out of markets,
 - controls prices or production levels,
 - restricts the quality, level or location of goods or services available,
 - restricts advertising and promotional activities,
 - restricts price or type of input used in the production process,
 - is likely to confer significant costs on business, or
 - provides some advantages to some firms over others by, for example, shielding some activities from the pressure of competition;
- analyse the likely effect of any restriction on competition and on the economy generally;

- assess and balance the costs and benefits of the restrictions for each anticompetitive provision identified;
- consider alternative means for achieving the same result and make recommendations including nonlegislative approaches; and
- clearly make recommendations. These should flow clearly from the analysis conducted in the review. If change is not recommended and restrictions to competition are to be retained, a strong net benefit for retention must be demonstrated.

When considering the matters referred to above, the review should, where relevant, consider:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and equity;
- interests of consumers generally or of a class of consumers;
- government legislation and policies relating to ecologically sustainable development;
- economic and regional development including employment and investment growth;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

The review shall consider and take account of relevant legislation in other Australian jurisdictions and any recent reforms or reform proposals including those relating to competition policy in other jurisdictions.

The review shall consult with and take submissions from those organisations currently involved with the provision of health services, other interested territory and Commonwealth government organisations, other state and territory regulatory and competition review authorities, affected members of the medical profession and their organisations and members of the public.