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CENTRE FOR
INTERNATIONAL
ECONOMICS

ATTACHMENT A

*NCP review of the
Northern Territory
Plumbers and
Drainers Licensing
Act 1983*

Prepared for

Department of Industries and Business

*Centre for International Economics
Canberra & Sydney*

September 2000

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Glossary

ANZRA	Australia New Zealand Reciprocity Association
CIE	Centre for International Economics
DIB	Department of Industries and Business
MPA	Master Plumbers Association
NCP	National Competition Policy
NECA	National Electrical Contractors Association
PAWA	Northern Territory Power and Water Authority
RTO	Registered Training Organisation
TCA	Territory Construction Association

Summary

THE REVIEW FINDS THAT, in the broad, the plumbers and drainers licensing system supported by the Act, while restrictive, confers net benefits and should be retained. Specific recommendations are that:

- the Act should be amended to specifically state its objectives;
- the Act should be amended to give explicit recognition to the national competencies-based approach to trades qualifications;
- the Act provides little support for delivering work of required standard. A general review of the Act should include examination of the case for requiring the signing of compliance certificates by licensed tradesmen;
- changes to the Act to enhance compliance require a general review conducted against the background of changes to the *Water Supply and Sewerage Act* and the current provisions of the *Building Act* which specifies a role for 'certifying plumbers';
- the Board's wide range of options in dealing with complaints should be made widely known;
- the 'fit and proper person' test powers of the Board should be retained provided appeal mechanisms are clear and accessible;
- membership of the Board should be reviewed to establish whether continued Power and Authority (PAWA) membership is desirable in the light of any changed roles for PAWA; and
- a general review of the Act, preferably concurrent with any such review of the *Electrical Workers and Contractors Act* should further examine the case for restricted plumbing licences to meet the needs of other trades.

1

Introduction

Plumbers and drainers in the Northern Territory are directly regulated by the *Plumbers and Drainers Licensing Act 1983*. The Act contains various restrictions to competition, including certain requirements to be satisfied prior to market entry, and others while participating in the market. Accordingly, as part of the commitment of all Australian governments under the Competition Principles Agreement, the Act needs to be reviewed for consistency with the principles of National Competition Policy (NCP).

This review was initiated by the Department of Industries and Business, who commissioned the Centre for International Economics (CIE), in conjunction with Catalyst Consulting (formerly Desliens Business Consultants) to conduct the review. The terms of reference for the review are set out in Appendix A.

National Competition Policy – the framework for the review

A key objective of NCP is to develop open, integrated markets throughout the economy to promote competition where it encourages more efficient resource use, stimulates cost reductions and brings quality improvements. NCP assumes competition is desirable *unless* a legislated restriction can be shown, on a case-by-case basis, to deliver socially beneficial or desirable outcomes that are greater than those with no such restrictions in place. The specific test contained in the Competition Principles Agreement is that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and
- the objectives of the legislation can only be achieved by restricting competition (Clause 5(1) of the *Competition Principles Agreement*).

Both these criteria must be met if a restriction is to be retained. To keep a restriction, it is necessary to demonstrate that to do so will result in a public net benefit. It is not sufficient to demonstrate that its removal would result in no or little net benefit.

Market failure as a justification for intervention

Legislative restrictions that restrict competition may be justified in order to correct 'market failure' – where unfettered competition produces flawed outcomes. Yet market failure is relative. All markets fail to some degree because the benchmark against which failure is measured is an *ideal case*. Under NCP, the test is whether a set of arrangements generate net benefits by comparing actual market outcomes with what can realistically be achieved by intervention. For example, we should ask if today's licensing is the best way (in a net benefit sense) to reduce risk to public health and the integrity of water and sewerage systems, rather than whether it eliminates dangers altogether.

The review assessment process

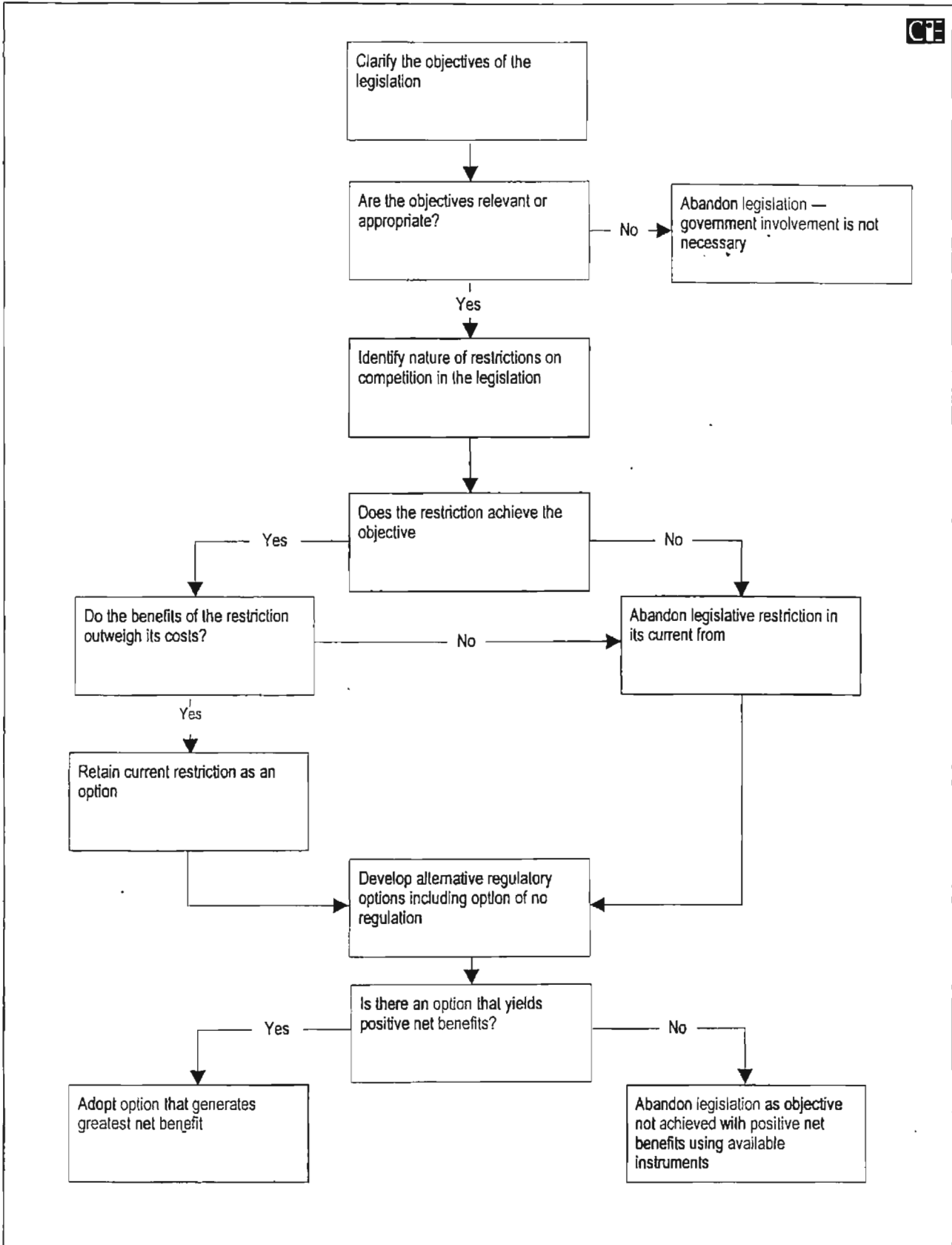
The key steps for an NCP review are to:

- describe the industry and regulatory structure;
- 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 costs and benefits of the restrictions; and
- consider alternative means of achieving the same results including non-legislative approaches.

Chart 1.1 illustrates the review assessment process adopted in this review. A restriction to competition is only to be retained if it is shown to produce net benefits and there is no less restrictive way to do so. Public interest issues are to be taken into account in assessing the net benefits including:

- 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;

1.1 Review assessment process



- interests of consumers;
- competitiveness of Australian businesses; and
- efficient resource allocation.

Consultations

An issues paper was prepared and distributed to stakeholders as part of the review process. It canvassed issues related to the effect of current licensing restrictions on competition, the level of charges and standards in the industry. The nature and purpose of the review was advertised in NT newspapers, along with calls for submissions.

Several consultations were held with stakeholders during the review assessment process. All identified stakeholders were contacted and invited to participate in the review. Members of the review team met or spoke with representatives from the Power and Water Authority, the Master Plumbers Association, National Electrical Contractors Association (NECA), the Territory Construction Association (TCA), the Department of Industries and Business (DIB) in both Darwin and Alice Springs, the NT Chamber of Commerce in Alice Springs, the Tangentyere Council and Tangentyere Constructions in Alice Springs.

There were two formal written submissions to the review. Numerous verbal comments made by stakeholders have also been taken into consideration in the review.

2

Industry structure and regulation

Industry size and composition

The demand for services and those who supply them in the NT

Demand for plumbing and draining services arise from the construction sector, and the ongoing needs of households, business and government in the NT. There is no separate documentation of transactions involving these trades so no estimate can be made of the 'size of the market'. To service demand, there are more than 450 registered/licensed tradespeople assisted by apprentices eligible to undertake work governed by the Act. (see table 2.2). An unknown number of tradesmen assistants are employed.

Based on 1999 figures roughly 10 per cent of the skill base was augmented by the granting of new licences either to apprentices who have completed their training or to others (the great majority) with existing qualifications that have been recognised by the Board.

There is no direct means of establishing precisely the number of plumbing/draining businesses. There are a number of businesses registered in neighbouring states which regularly operate in NT using people with NT credentials. As a rough indicator, the review team has reported the number of plumbers and drainers currently advertised in the Yellow Pages directory for NT locations. The results are given in table 2.1 below.

It is not possible to accurately gauge how many personnel registered with the Licensing Board are active in NT at any one time. Like other parts of the

2.1 Number of plumbers and drainers advertised in the Yellow Pages

	No.
Plumbing consultants	6
Drainers	12
Plumbers and gasfitters	114
Total	132

Source: The Yellow Pages.

construction industry, plumbers and drainers tend to be mobile, following the work where demand dictates and mutual recognition arrangements permit. Certificates of reciprocity are issued to tradespeople who had received their credentials in the NT, enabling them to establish their credentials outside the NT. Certificates *were* important for mobility but it is understood they have lost some importance under mutual recognition.

Under current administration, it is not possible to determine the proportion of registered/licensed tradespersons working in the NT are NT trained. It is only possible to establish the annual throughput of apprenticeship training in the plumbing trades by registered training organisations in NT.

The issues paper distributed as part of this review sought feedback on the price outcomes for plumbing and draining services in NT compared with other states and territories. Allowing for remoteness and distance factors, it was hoped that any such evidence might shed light on whether licensing restrictions could be construed as promoting higher service costs than elsewhere. However, no responses indicated this.

The types of skilled workers supplying the market

Work on draining (tasks associated with facilitating discharge to a common sewer, drain or septic tank) must be carried out or supervised by accredited tradesmen. There are different roles for registered *journeymen*, who are trained operatives who may also supervise apprentices and unskilled workers, and licensed *advanced tradesmen* who are permitted to undertake contracting. A similar, though separate structure applies to plumbing (work related to installation, fitting, altering and repairing fixtures fittings and pipes for carriage of sewage or water, including hot and cold water systems).

The numbers authorised to work under the various categories of journeymen and advanced tradesmen are given in table 2.2. Tradesmen frequently hold both plumbing and draining licences, enabling them to carry on an integrated business.

The role of PAWA

The NT Power and Water Authority (PAWA), with responsibilities for, among other things, the provision of reticulated water and sewerage services, established under a separate Act according to its submission (p. 1)

2.2 Numbers of NT licensed and registered tradespeople in plumbing and draining September 1999

	<i>New plumbers</i>	<i>New drainers</i>	<i>New plumbers & drainers</i>	<i>Total new</i>	<i>Renewed plumbers</i>	<i>Renewed drainers</i>	<i>Renewed plumbers & drainers</i>	<i>Total renewed</i>	<i>Total as at 7/9/1999</i>
	No. of persons	No. of persons	No. of persons	No. of persons	No. of persons	No. of persons	No. of persons	No. of persons	No. of persons
Journeymen	2	0	9	11	10	2	38	50	61
Advanced tradesmen	1	4	29	34	6	14	344	364	398

Source: 1998–99 NT Plumbers and Drainers Licensing Board annual report.

... provides significant direct and indirect employment for various categories of water and sewerage workers including apprentices and contractors. (However)...the Authority does not employ qualified or licensed plumbers.

PAWA states that the recently adopted Utilities Industries Training Package provides it with the means of identifying the training skill and knowledge requirements of its employees and that these differ significantly from the traditional plumbing trades.

The activities of PAWA have little effect on the demand for a supply of plumbers and drainers services in NT.

Role of the Plumbers and Drainers Licensing Board

A single central licensing authority regulates plumbers and drainers. Under the Act, entry into the trades is governed by the Plumbers and Drainers Licensing Board. The Board is appointed by the Minister and has representation from both the private sector part of the industry and the Power and Water Authority. Trades education is also represented.

The Board must be comprised of:

- an employee as defined by the *Public Sector Management Act* who is a nominee of PAWA;
- a representative of educational institutions in the Territory providing training courses for apprentice plumbers and drainers;
- two persons holding qualifications as an advanced tradesman in the combined trades of plumbing and draining; and
- a representative of the NT authority charged with registration of apprentices and oversight of the training of apprentices.

The Board is constituted to:

- assess the qualifications and suitability of tradesmen/women;

- issue/cancel certificates of competency and reciprocity certificates for advanced trades and journeymen/women;
- issue, renew, suspend, cancel or reinstate registration cards/licences;
- maintain a register of advanced trades or journeymen/women;
- enforce the Act; and
- to request and receive reports relating to inspections carried out under the *Water Supply and Sewerage Act* in respect of offences against that Act or the workmanship of licensed plumbers or drainers or journeymen.

The Board has the discretion to make any inquiries as it sees fit, examine potential market entrants, conduct hearings, and undertake other administrative functions to help it perform its tasks.

It is noteworthy that the Board's role is different from that of regulatory bodies in some other jurisdictions. In Victoria, for instance, the Plumbing Industry Commission which replaced the Plumbing Industry Board has a much wider remit. Its functions include (among others) requirements to

'Monitor and enforce compliance with technical standards applying to the plumbing industry, including standards applying to materials, installations, construction and maintenance'

'Provide information and training to assist people and bodies carrying out their functions under this Part (of the Act) or the regulations'.(Building (Plumbing) Act 1998

and to advise the Minister on plumbing technical standards.

Delegation of responsibilities to the Department

Department of Industries and Business provides administrative support to the Board, which has delegated the power to issue licences to officers in the Department. DIB is the first point of contact for those seeking registration and licensing and undertakes the practical work of establishing eligibility, and issuing licences and registrations. It deals with the recognition and licensing of those with interstate credentials. Approvals of registration and licence applications by the Department are ratified by the Board, which meets quarterly or as required to deal with licensing, registration and reciprocity certificates, complaints and disciplinary matters.

Turnaround time for licence and registration application approval is, according to DIB estimates, typically between 5 and 10 days. More complex cases involving such matters as overseas credentials can take longer.

There is in this structure a separation of the day to day administration of the licensing requirements of the Act and the formal ratification and review role of the Board.

Other regulation

The Act establishes the Board as the primary regulator of who may or may not work in the trades. Whilst it defines the work that may be done by tradesmen and journeymen, it does not directly deal with *how* tradespeople go about their business other than to specify what supervision is required. Rather, it provides for powers of inspection by authorised persons who establish whether work is being carried out by registered or licensed people and whether it has complied with prescribed standards.

Inspection requirements under the *Water Supply and Sewerage Act* are carried out by officers of the Department of Lands and Planning. Inspections may detect work in breach of standards or unlicensed work. Where inspectors detect and report breaches of the *Water Supply and Sewerage Act* or the *Plumbers and Drainers Act* to the Board, the Board can act on these matters. Inspections are, notionally, an important part of the regulation of plumbers and drainers. However, the fact that they occur under another Act means they cannot be fully reviewed here.

Nevertheless the relationship of the Act under review here to its objectives, discussed below, is affected by the adequacy or otherwise of the inspectorial system.

The Department of Industries and Business reports that there have been few complaints directed to the Board in recent times. Complaints relating to self certification of completed work by plumbers operating under the *Building Act* are directed to the Building Practitioners' Board, and Consumer Affairs handles complaints about matters such as breach of contract. There have been no reported removals of licences or registration certificates by the Board in recent years

3 Objectives

Overall objectives

The work done by plumbers and drainers is primarily concerned with delivery of services within the boundaries of the properties of customers. But, as the MPA submission puts it:

Plumbers and drainers are the interface between privately and publicly owned properties and the public good that is our water and drainage system.

Consequently, the objectives of the legislation are not confined to protecting *individuals* against inadequate workmanship. The concerns are wider.

The Act under review was introduced in 1983. There are no *explicit* objectives stated in the Act. Parliamentary debate at the time and subsequent documentation suggests that the legislation governing plumbers and drainers was introduced, and is administered, to achieve the following key objectives:

- to protect the health of the community and assure standards;
- to provide some measure of flexibility for 'handy-people' to undertake their own plumbing and draining work in specific circumstances; and
- to achieve reciprocity with other Australian states and New Zealand, and allow the qualifications of NT tradesman to be recognised in those jurisdictions and to thereby achieve uniformity of standards throughout Australia and New Zealand.

Objectives relating to public goods

The licensing system established by the legislation and supported by related legislation that underpins the inspection and certification of work has objectives that relate to the welfare of individual consumers and to the wider community. The requirement that, subject to minor exemptions, plumbing and draining work be carried out or supervised by licensed tradesmen according to accepted standards can be seen to have the

objective of protecting *individual* consumers from shoddy workmanship which could, in some circumstances, compromise those individuals' health. However a wide range of services present consumers with some such risk without necessarily being licensed.

Whilst individual consumers should arguably be allowed to choose the service standard they require and how much risk they bear in many consumption decisions, plumbing and drainage services differ from the norm. Where households and businesses are connected to common systems, individual decisions can affect the wider public. A decision, in the interests of cost saving, to use an unqualified drainer to connect to sewer, for example could jeopardise the local environment and the health of the local community.

In its submission to this review the Master Plumbers Association refers to the common usage characteristics of the (reticulated) water and sewerage systems of NT. It refers to the 'checks and balances to ensure that the *integrity of the system* (our italics) is maintained' (p. 2). The MPA go on to say

Licensed Plumbers and Drainers are the agents of that system and have historically been charged with securing the functionality of it.

Both reticulated water supply and sewerage services are regulated by the *Water Supply and Sewerage Act* which is undergoing separate review. Building inspection activity, including the inspection of plumbing and draining work is carried out to ensure standards are adhered to under the *Building Act*. It is those Acts in combination with the *Plumbers and Drainers Licensing Act* which provide for the inspection of work carried out by the tradesmen registered and licensed under the latter.

The entry requirements and provisions for the Board to initiate or receive inspection reports by qualified inspectors are designed to ensure that the water supply and sewerage systems are not compromised by inferior workmanship. Requirements apply to any plumbing and draining work not subject to exemption. In recognition that, in practice, there is a considerable amount of work done by people on their properties and in their homes who would otherwise be breaking the law, the Act allows for exemptions for undertaking limited work without a licence.

Exemptions and their objectives

When the bill for this legislation was debated, its supporters made it clear that they considered it desirable to allow householders and land holders to

undertake minor cold water system repairs and, where bores were involved, connections, provided suitable materials were used. The intended result appeared to be to avoid costs to householders of having qualified tradesmen undertake relatively minor repairs where no threat to the integrity of water supplies or the safety of the public arose. Installations relating to bores and irrigation in particular, form an important category for allowing flexibility for rural property holders without ready access to skilled tradesmen.

Exemptions can be summarised as:

- repairs by the owner (occupier) on approved cold water plumbing installation;
- plumbing installations on land that is located in water supply areas where the installation is connected to a bore on that land; and
- installations of a watering or drip water system for irrigation, not connected to the Territory water supply system.

The Act, in making these provisions, recognises both the need to avoid over regulating the activity of NT residents who can undertake minor tasks on their own account at no risk to the system, and the reality of the Territory in which substantial sections of the rural community are not serviced by reticulated water and sewerage. In these respects the objectives of the Act relating to exemptions remain as relevant today as when the legislation was enacted.

Reciprocity objectives

There is provision under the Act for the recognition of equivalent expertise obtained elsewhere in Australia and New Zealand. Where comparable qualifications and experience has been certified by a member authority of the Australian-New Zealand Reciprocity Association (ANZRA), or elsewhere recognised by ANZRA, a person may become registered or licensed as a plumber or drainer or both. The Board is a member of ANZRA.

ANZRA comprises the relevant authorities in each jurisdiction, which conduct examinations and certify the competency of tradesmen in these fields. The Act provides for recognition for licensing and registration purposes of those holding equivalent licences and registration certificates recognised by ANZRA. These may be from other states or territories or from overseas.

The Act also empowers the Board to issue Reciprocity Certificates to those who have obtained their trade qualifications in NT and wish to use them in other states or territories.

The objective, and combined effect, of these arrangements is to increase the mobility of qualified plumbing tradespersons and contribute to greater uniformity of standards in Australasia. Both objectives are relevant and worthwhile for NT communities which because of their size and remoteness benefit from being able to tap into the wider market that supplies skilled personnel to the plumbing trades in Australia.

Assessment of objectives

The objectives inferred remain relevant. There may, however, be other worthwhile objectives that a licensing system could seek to pursue. Some have been suggested in submissions. They are touched on later in this report in the context of a more general review of the Act.

Partially overlapping legislation

There are other Acts which help to deliver the objectives of the *Plumbers and Drainers Licensing Act*. They include the *Building Act* and the *Water Supply and Sewerage Act*. However, each of these relies to some extent on the role of *licensed* plumbers and drainers in either certifying building work or notifying compliance with the provisions of each Act. To that extent, it is not possible to conclude that the objectives of the Act under review could be achieved under other existing legislation.

4

Nature of restrictions and how they are applied

COMPLETELY UNREGULATED ACCESS to the market for plumbing and draining services would mean allowing any person who so chose to work in these trades, or to contract for work, to do so. By imposing qualification and experience conditions on those permitted to work, and to work unsupervised, in the industry the Act affects the supply of services. The inferred objectives of the Act imply that these potential restrictions on competition are targeted at risk reduction.

This chapter examines the restrictions to see to what extent they restrict competition and to what extent they achieve the objectives attributed to the Act.

The chapters that follow examine whether and how the outcomes differ from unfettered competition, whether there are significant costs entailed and whether there are likely to be offsetting benefits and whether such benefits might be achieved in a less competitively restrictive way.

Entry restrictions

The qualification and experience requirements of the Act

To ensure that unskilled and unsupervised people do not subject themselves and the rest of the community to risks through making unauthorised installations, connections and repairs to reticulated water and to sewerage and drainage systems, all States and Territories restrict access to most plumbing and draining work to qualified tradespeople or those under their training and supervision.

Risks arise not only through the nature of the work but also through the materials used. But materials and processes continue to change. The power to specify which materials may be used for different tasks is regulated under the *Water Supply and Sewerage Act*.

The licensing process relies on the continued updating and relevance of the qualifications required by the Act's regulations and provided by the Registered Training Organisations. These issues are discussed further below.

The Act restricts entry and restricts activity among those who have been admitted to the trades but hold different qualifications and experience. The qualification and experience requirements of the Act are set out in table 4.1.

The Board restricts entry to those who qualify for its Certificates of Competency as journeymen or advanced tradesmen. The prerequisites for these include completion of the relevant apprenticeships and examinations and prescribed practical experience. Certificates of Competency from the Board and 'fit character' evidence are then the basis for issuing licences or registration certificates.

It should be noted that, in the current application of the Act, the step of issuing Certificates of Competency as a precondition for registration or licensing is bypassed since the Act permits licensing or registration of those *entitled* to such certificates. This means that, for instance an apprentice who has successfully completed training and examinations is deemed to have the competencies and can be registered without having been formally issued with a Certificate of Competency by the Board.

Apprentices and unskilled workers are required to work under direct or indirect supervision. The objective of this is public and worker safety and quality assurance for the public.

The training requirements imposed on apprentices are largely dictated by what are increasingly nationally accepted competency requirements in these trades.

The requirement to pay fees

This is a condition of licensing or registration. As the discussion of costs in the next chapter shows, these licence and registration fees are so small as to have no restructure influence on the workings of the market for their services.

4 NATURE OF RESTRICTIONS AND HOW THEY ARE APPLIED

4.1 Entry requirements

Category	Qualifications	Or equivalent experience requirements	Other
Journeyman's registration as a plumber and drainer for an applicant who holds or is entitled to a certificate of competency.	<ul style="list-style-type: none"> ▪ Completed an apprenticeship course in plumbing and draining at an appropriate Territory educational institution and passed final exams in plumbing and draining (or meets experience requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Minimum of 5 years experience in the trade gained under supervision of advanced tradesmen during which time he/she completed the journeyman equivalent course and passed examinations in plumbing and draining (or meets educational requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Becomes registered, subject to Boards satisfaction of fitness of character and qualifications ▪ Registration fees payable. Renewable after 3 years, subject to additional fees and Board approval
Journeyman's registration as a plumber for an applicant who holds or is entitled to a certificate of competency.	<ul style="list-style-type: none"> ▪ Completed an apprenticeship course in plumbing and draining at an appropriate Territory educational institution and passed final exams in plumbing (or meets experience requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Minimum of 5 years experience in the trade gained under supervision of advanced tradesmen during which time he/she completed the journeyman equivalent course and passed examinations in plumbing (or meets educational requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Becomes registered, subject to Boards satisfaction of fitness of character and qualifications ▪ Registration fees payable. Renewable after 3 years, subject to additional fees and Board approval
Journeyman's registration as a drainer for an applicant who holds or is entitled to a certificate of competency.	<ul style="list-style-type: none"> ▪ Completed an apprenticeship course in plumbing and draining at an appropriate Territory educational institution and passed final exams in draining (or meets experience requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Minimum of 4 years experience in the trade gained under supervision of advanced tradesmen during which time he/she completed the journeyman equivalent course and passed examinations in draining (or meets educational requirements) or ▪ Holds a reciprocity certificate issued by an ANZRA authority or ▪ Holds equivalent, ANZRA-recognized qualifications 	<ul style="list-style-type: none"> ▪ Becomes registered, subject to Boards satisfaction of fitness of character and qualifications ▪ Registration fees payable. Renewable after 3 years, subject to additional fees and Board approval
Category	Qualifications	And additional experience requirements	Other
Advanced tradesman's licence as a plumber and drainer for an applicant who holds or is entitled to a certificate of competency.	<ul style="list-style-type: none"> ▪ Gained certificate of competency as a plumber and drainer ▪ Completed an approved advanced trade practices and management course 	<ul style="list-style-type: none"> ▪ Minimum 2 years experience as journeyman in plumbing and draining ▪ Completed approved advanced trade practices and management course 	<ul style="list-style-type: none"> ▪ Becomes licensed, subject to Boards satisfaction of fitness of character and qualifications ▪ Licence fees payable. Renewable after 3 years, subject to additional fees and Board approval
Advanced tradesman's licence as a plumber or drainer for an applicant who holds or is entitled to a certificate of competency.	<ul style="list-style-type: none"> ▪ Gained certificate of competency as a plumber or drainer ▪ Completed an approved advanced trade practices and management course 	<ul style="list-style-type: none"> ▪ Minimum 2 years experience as journeyman in plumbing or draining ▪ Completed approved advanced trade practices and management course 	<ul style="list-style-type: none"> ▪ Becomes licensed, subject to Boards satisfaction of fitness of character and qualifications ▪ Licence fees payable. Renewable after 3 years, subject to additional fees and Board approval

^a Fees payable range from \$5 to \$60.

Restrictions in other states

There is no uniformity as to licence categories or experience requirements across jurisdictions. NT has one of the simplest partitions, recognising just the two categories of plumbers and drainers under the Act, with advanced tradesmen and journeymen in each category and combined plumbing and draining licences and registration certificates open to those with the requisite qualifications and experience in each area.

Other jurisdictions impose entry requirements and stipulate work demarcation in a variety of ways.

South Australia licenses plumbing *contractors* and registers plumbing *workers*. Contractors licences and plumbing workers' registrations are available to those with certificates of competency issued by the Sanitary Plumbers Examining Board, the comparable body to the NT Board. Contractors require business credentials while workers do not.

Victoria, in contrast to NT, recognises 7 distinct plumbing and draining registration and licence categories – four in addition to the categories of water supply, sanitary plumbing and a separate draining trade. *Registered* plumbers or drainers are similar in category to the NT journeyman, being entitled to undertake unsupervised work but unable to sign off on compliance. Only licensed persons may do so. For those who have completed a Victorian apprenticeship, there is a four year experience requirement. There is a provisional registration available to enable those plumbing workers who are studying to work under supervision.

In Victoria, apprentices with the requisite four years of experience who present the Plumbing Industry Commission with a Certificate of Completion issued by the State Training Commission, a Statement of Results from the Trade School and satisfy the experience requirements are eligible for registration.

Queensland offers plumbers licences, water plumbers licences, country plumbers licences and drainers licences. The first of these covers plumbing and draining and requires the completed apprenticeship to be accompanied by 5 years' practical plumbing experience. The other plumbing licences require 3 years' experience and the drainers licence 1 year.

Other jurisdictions also offer a variety of *restricted* licence or registration categories.

Certificates of completion or proficiency from recognised training bodies are a required part of the licensing procedures elsewhere, as they are in NT.

These certificates provide the underpinning for mutual recognition across jurisdictions.

Reciprocity and mutual recognition as a counter to restrictions on entry

Without mutual recognition among the states and territories the mobility of tradesmen would be severely restricted and NT in particular would suffer from the exclusion of access to qualified tradesmen from elsewhere. The NT Board and its equivalent authorities in the other jurisdictions are members of the Australian–New Zealand Reciprocity Association (ANZRA).

Table 4.1 above shows the number of new licence holders who in 1999 successfully overcame the hurdles to entry created by the legislation. The review team has not been able to establish how many of these new entrants are those who have been trained and accredited elsewhere as the Department does not distinguish these in its records. It is not therefore possible to quantify how effectively or otherwise these aspects of the legislation are achieving the desired objective of enhanced supply of skilled plumbing tradespeople to NT.

The Master Plumbers Association contests that entry is restricted in a way that meaningfully affects competitive outcomes. The Association in its submission says

In a theoretical sense any form of licensing restricts access to a market. A truer test in the real world is whether the supply of plumbers and drainers is less than the demand for their services. Again, we would contend that this is not the case.

The NT economy is an extremely open economy with a long track record of managing changes in the demand for labour by attracting labour from the other states in Australia, and overseas. This is underpinned by the fact that the local employment market is quite small in comparison to other states and changes in the NT demand would not have any discernible effect on those economies.

That is not to deny that the availability of skills of all types can be problematic in the regional centres of the Territory which increases labour costs and therefore the costs of services to the community.

The MPA also suggest that there is evidence of no undersupply of services in the recurring exit of new entrants to the market on the grounds that there are too many companies for the available workload. This could of course be symptomatic of high barriers to *effective* entry. However it is the view of the review team that the legislation itself is not fostering an

environment in which incumbent firms can easily erect further barriers to entry to competitors.

Restrictions on the activities of holders of licences and certificates of registration

As mentioned, the Act restricts plumbing and draining work (with certain exceptions) to licensed or registered tradesmen or those under their supervision. The main distinctions are those that apply to what advanced tradesmen who hold a licence may do and what others may or may not do. Under the definitions of the Act licensed advanced tradesmen can carry out work on their own account, the licence authorising them to engage in contracts.

(We note that, additionally, under the Building Act, licensed plumbers who are classified as 'building practitioners' must be covered by insurance to engage in contracts.)

The requirement for supervision, where observed and enforced, raises the cost of plumbing services. The extent to which it does so is unknown. The review team presented the industry, via an issues paper, with the question of whether there was a need to clarify the permitted roles of those with and without licences and registration cards. One objective of any such clarification might be to identify those tasks which require limited expertise, carry little risk and could safely be done by unskilled workers or apprentices without direct supervision. The industry did not respond, suggesting that such opportunities may be limited, or alternatively that the additional costs of supervision are either slight or readily passed on to consumers.

The restrictions on unsupervised activities under the Act are very difficult to enforce. Adherence to this part of the Act's requirements is difficult if not impossible to estimate as are the costs that adherence currently imposes. Effectiveness of these restrictions in the Act relies on voluntary compliance by licence holders.

Restrictions on other trades

Discussions with representatives of tradespeople in the course of this review brought to light concerns of electricians about this Act's restrictions on them. No written submission on these concerns was made to this review.

In carrying out minor plumbing work in the course of repairs to certain appliances like washing machines and dishwashers, it appears that electricians may sometimes be in breach of this Act. Involving plumbers just to satisfy the Act would substantially increase the cost of such work to customers.

There may be a case for offering restricted licences for these and similar purposes. In the general review of the Act which is advocated in this report, the needs of other trades for restricted rights to undertake minor plumbing work should be assessed.

Effects of the restrictions on competition

The limitations on who may operate in these trades and how they may operate does result in different market outcomes than if there were no such restrictions. Training and supervision impose costs and these must be recovered through the market place. There do not, however, appear to be significant barriers to entry to new firms offering plumbing services as a result of the licensing arrangements.

5

Costs and benefits

OCCUPATIONAL LICENSING RESTRICTIONS for plumbers and drainers and the administrative arrangements to implement them generate costs and benefits for the NT community. National Competition Policy is aimed at maximising the net benefits to the community of the competitive process. Unless there is a risk of significant market failure, the presumption is that relatively free competition will deliver net benefits through enhanced efficiency. Restrictions such as occupational licensing therefore have to 'prove their worth'. The benefits have to outweigh the costs for their retention to be worthwhile.

The costs of occupational licensing

Costs fall into a number of categories. There are direct administrative costs of running the system, compliance costs and hidden costs borne by the industry, some of which may subsequently be passed on to consumers. There are also hidden costs borne by consumers through restrictions on choice and any market power that is created by licensing and exploited by licensed contractors.

Many of these cannot be quantified. It is the task of this review to assess whether such costs are likely to be significant and likely to outweigh any benefits that licensing confers.

The costs of regulation which are relevant to a review of this kind are the *incremental* costs compared with a situation where the requirements of the Act are absent. The costs of regulation are the combined costs of a system that restricts entry, limits activity and imposes material standards and codes of workmanship.

Disentangling the costs of regulation created by this Act from those of related legislation is not straightforward. For instance, the *Water Supply and Sewerage (amended) Act* (1983) provides for Codes of Workmanship that must be adhered to, requires licensed persons to give notice of completion of permitted works for inspection purposes and empowers PAWA to

appoint inspectors and to prescribe the use of materials. The *Building Act* (1993) includes 'certifying plumbers' among the 'building practitioners' that it regulates, and as mentioned, inspection services that provide the backbone of enforcement of the Act under review are provided by officers of the Department of Lands and Planning.

Administrative costs

Administrative costs arise through the Board and the resources committed by the Department to processing licensing applications, assessing reciprocity requests, dealing with complaints and servicing the Board. The Board, which is assisted by Department staff, consists of 5 members who serve in a part time capacity with the Board meeting monthly or more frequently if required. In practice the greater part of assessment and processing is undertaken by an official of the Department under delegation from the Board with the Board ratifying approvals. The Department's costs cannot be estimated precisely because they are common costs, with personnel, equipment, office space and the like spread across other tasks and functions rather than being dedicated to administration of the Act. For instance, staff dealing with plumbers licensing issues also deal with those associated with the electrical trades.

The Department reduces licensing costs by issuing licenses and journeyman registrations which have a three year life and common expiry date. (Someone seeking a licence say two years from the common expiry date will have the licence fee pro-rated down.)

The best estimate of the share of Departmental common costs that might reasonably attach to administration of this Act are \$13 000 annually (Department of Industries and Business).

In addition to these there are hidden costs borne by Board members who sacrifice time to sit on Board meetings. These 'opportunity costs' will vary from member to member depending on foregone earnings or the value of leisure time. However, given 4 quarterly meetings and a duration of 3 hours for each for the 5 members a figure of \$5000 to \$10 000 seems reasonable to attribute to this source of costs.

The Department seeks to partially recover the costs of administering the licensing system through the fees it charges for issuing licences and for licence and registration renewal (see table 5.1). Whilst these fees are a cost to tradesmen they should not be added to the administrative costs of the Department and Board when reckoning up the costs of the scheme. This would result in double counting. They are, however, compliance costs for

5.1 Plumbers and drainers licensing and registration fees^a

	\$
Journeyman registration application	30
Journeyman renewal fee	30
Advanced tradesman licence application	60
Advanced tradesman licence renewal fee	60
Journeyman reciprocity certificate	5
Advanced tradesman reciprocity certificate	10

^aLicences and registrations have a validity of three years with a common expiry date. The cost of licence or registration application or renewal with two years to run is reduced by one third and with one year to run is reduced by two thirds.

Source: Department of Industries and Business.

industry, which could potentially act as a barrier to market entry. Based on current numbers of those registered and licensed and the fees listed, these recovered costs are approximately \$8000 annually.

On administrative costs of licensing, the MPA submission (p. 3) takes the following view

...the discussion paper (for this review) identifies an annual administrative cost of just \$13 000 for the NT Government to manage the licensing regime.

It would be our contention that this amount would be substantially less than the transactions costs that consumers would incur in determining a quality plumber if licensing was not an option available to them.

Enforcement costs

The enforcement of the provisions of the Act which require that only licensed or registered persons undertake certain tasks relies on a combination of reporting of illegal activity by other building practitioners or the general public or detection by inspectors.

DIB (personal communication) reports that there is currently only one officer of the Department of Land and Planning exercising this inspectorial function, which is only undertaken in the Darwin area.

In effect the system is heavily reliant on self certification of work and voluntary compliance by contractors. So while the enforcement costs to government are low, the effectiveness is open to question.

If (the lack of) enforcement is such that the objectives of the Act are not satisfied, ineffective regulating is costly regulation.

Costs borne by industry initially

Industry does bear costs arising out of licensing. These include

- training costs of those who undergo apprenticeship training – costs which fall on the trainees in the form of course fees and foregone earnings in another job; and
- compliance costs – the costs to plumbing and draining contractors of carrying out work using skilled tradesmen either to do the work or to supervise it, as required by the Act, and their ongoing payment of specified fees of around \$8000 per annum, as mentioned above by tradesmen themselves.

The latter costs will be passed on to customers to the extent allowed by competition in the market. Given the relatively high per capita ratio of available plumbers in the Northern Territory, it is likely that most compliance costs are borne by tradesmen themselves.

The University of the Northern Territory advises (personal communications) that the required courses for completion of plumbing, draining *and* gasfitting involve 960 hours at a charge of 77 cents per hour resulting in total tuition charges of \$739.20 for the course. The comparable figures for plumbing and draining are 880 hours and \$677.60 respectively.

Spread over the period of tuition, these fee levels are, in the review team's opinion, unlikely to represent any significant deterrent to entry to the trades.

Hidden costs to consumers of regulation

Compared to an unregulated environment in which consumers (including building contractors, individual households and all others who use the services of these trades) could choose freely to engage any service provider or provide their own services, some consumers will be worse off.

There are those who would wish to offer their services, possibly at cheap rates compared with licensed contractors, but are prevented from doing so because they do not satisfy the licensing requirements. Periodic reports of unlicensed operators working in NT testify to this latent supply. And there are contractors who would, if permitted, employ unskilled workers to perform some of the tasks of journeymen, or who would choose to exercise less supervision of unskilled work. At least short term cost savings to contractors would result.

To the extent that competition would see apparent cost savings passed on to consumers in a deregulated system, and these savings are presently unavailable, it could be said that regulation imposes hidden costs on some consumers. Consumers who could identify service providers who were not

necessarily formally qualified or substantially experienced but could safely perform plumbing tasks are arguably disadvantaged by the restrictions imposed by the Act. They are forced into using a higher cost service or risk violating the Act.

Without the current provisions there is little doubt that significant numbers of tradesmen would seek to credential themselves in much the same way as they do now. They would use these credentials as a means of differentiating themselves from riskier competitors. They would incur costs in doing so and in return charge a 'premium' to those wanting to use them.

The MPA in their submission (p. 3) raise the question of whether licensing raises costs to consumers

...by conveying some monopoly power to individual plumbers and drainers that allows them to charge above a true market price, or alternatively, requires unnecessary work to be performed. There is currently no evidence to suggest that either problem exists in a meaningful way in the Northern Territory.

The MPA goes on to argue that the market for these services to qualified providers from other states is very open. This is discussed further below.

Benefits of occupational licensing

Intervention to correct market failure

A key reason for government intervention, and the main justification under National Competition Policy, is to correct market failure. One view of the benefits of regulation is to see them as the avoided costs of market failures that are likely in an unregulated environment.

There are two main sources of market failure that could arise if the market for plumbing and draining services operated unrestricted. These are:

- the difficulty that consumers could face in establishing the true competence of any would-be contractor bidding for their custom; and
- the incentive that individual purchasers might have to employ least cost but unqualified or inexperienced tradesmen without considering the potential third party costs that this could impose on other users of the water and sewerage network in the event of incompetent or negligent work.

Ensuring safety and security of the water supply and sewerage *systems* is both the major objective of the Act and the single most important potential benefit of licensing.

In considering how the Act tries to deliver these benefits, a distinction needs to be made between faulty or substandard work by *licensed* tradesmen and illegal work by unlicensed persons.

As discussed, a primary objective of the legislation is to overcome risks to the system and the costs to the community that would follow from faulty work whatever its likely source. And one way of reducing these risks is to reduce incentives to supply or use risky service providers in the form of unlicensed persons. The Act does this by requiring licensing, restricting activity and placing unlicensed work outside the law and imposing penalties for it. (Carrying out unlicensed work can attract penalties between \$2000 and \$5000 or up to 6 months imprisonment. Employment by the customer of unlicensed or unregistered persons, except where exemptions apply, also carries a \$2000 penalty.) It does not, of course, remove the incentives entirely for either purchasers or suppliers.

The effectiveness of regulation in countering the risks of unlicensed work (and consequently the benefits from it) also depends on how strong a deterrent is provided by the combination of fines and the likelihood of apprehension. As discussed above this likelihood is questionable given the inspection resources applied, particularly outside Darwin. The effectiveness of the Act in delivering the benefits of quality work by *licensed* tradesmen is conditional. It depends on *compliance* and the means of ensuring it.

Licensing does reduce the 'asymmetric information' problem whereby purchasers know less about the competence of tradesmen than they do themselves, a problem common to many forms of transaction. To the extent that it successfully alerts consumers to the need for evidence of a licence and locks in minimum entry competencies and mandates supervised work, it reduces consumer costs of risk bearing. The extent of that reduction depends partly on the adequacy of licensing requirements and partly on the extent of enforcement of applied standards.

Most purchasers would have a strong self interest in guarding against shoddy work. In the absence of licensing they would be likely to seek out evidence of competence. But there would be those who would be willing to accept the individual risks of lower quality work in return for a lower contract price. In doing so however they could be spreading risks to others, particularly in multiple dwelling buildings or in commercial premises with

more than one occupant. To the extent that licensing eliminates or substantially reduces these risks, it reduces the expected losses that accompany them.

In the absence of a Territory wide, government backed licensing scheme, ill informed, inexperienced consumers seeking to minimise their own risk exposure to poor work may have significant difficulty in establishing the bona fides of those presenting for work. The search costs they are spared under the current system represent a benefit.

As the MPA has stated, there would be significant increases in transaction costs for some consumers in determining the quality of a plumber in the absence of licensing. Their avoidance must be counted as a benefit.

Benefits of addressing the reciprocity objectives

In addition to benefits within the NT, its reciprocity provisions confer additional benefits for plumbing and draining workers. By giving Territory trained plumbers and drainers the option of working elsewhere they increase the attractiveness of entering these trades and reduce the likelihood that a school leaver will dismiss plumbing and draining in favour of other training or move interstate for training. For those already qualified it raises their mobility – an important consideration when so much plumbing work follows notoriously cyclical building work.

Statistics on the breakdown of the proportion of new licence holders trained in other states are unavailable so the 'supply side' benefits of these provisions could not be further refined. However, the reciprocity and mutual recognition provisions are market broadening and competition enhancing. In their absence it is likely that the costs of plumbing work in NT would be substantially higher with consumers having to rely entirely on 'home grown' service providers who would be likely to be fewer in number than at present.

Realising potential benefits

The ability to realise the risk reducing benefits of licensing is compromised under current arrangements. Plumbing and draining work that requires a permit (this does not include maintenance work) under the *Water Supply and Sewerage Act* is open to inspection under that Act. But these inspections are delegated to the Department of Lands and Planning with only one officer assigned. The *Water and Supply Act* is under review. The future of inspection arrangements is uncertain.

Whilst quantitative estimates have not been possible, the review team is satisfied that on balance the *potential* benefits of the licensing provisions of the *Plumbers and Drainers Licensing Act* are significant and larger than the costs. However, given the present enforcement arrangements, which are currently largely implemented without input from either the Department or the Board, realisation of these benefits is problematic.

This does not constitute a case for removing the restrictions. Rather it is one for making them more effective.

6

Alternative arrangements

NCP REVIEWS which establish that legislation restricts competition but confers net benefits on the community must nevertheless consider whether there are less restrictive ways of delivering similar benefits. A positive net benefits assessment simply means that the current system remains one viable option for regulation.

The principle alternatives for arrangements governing the plumbing and draining industry include:

- complete deregulation;
- negative licensing; and
- industry self-regulation.

These alternatives must be assessed on the extent to which they meet legitimate objectives of regulation, and which do so in a manner that confers net benefits to the wider community.

Recapping, the objectives of current regulation found to have continued relevance and importance to arrangements governing the plumbing and draining industry in the NT include:

- security of public health and safety through secure water supply and sewerage systems;
- flexibility for regional committees in NT; and
- underpinning mobility of the workforce.

Complete deregulation

The 'no regulation' option is not a viable one for the plumbing trade. In the main, consumers of these services are not 'expert clients'. Consumers need assistance in identifying competent plumbing and draining tradespeople and the assurance of work certified to minimum standards. It is the judgement of the review team that a decision to abandon a licensing framework for these trades in NT would:

- shift risks and search costs to consumers without substantially reducing prices for plumbing and draining work of the required minimum standard in urban areas served by reticulated water and sewerage;
- bring no benefit to remoter areas which do not pose the same system risks, where it remains important that work is performed to an appropriate standard;
- be incompatible with other current legislation, in particular the *Building Act* and the *Water and Sewerage Act* which jointly regulate these trades along with other licensed trades; and
- discriminate against the prospects of NT trained plumbers and drainers who currently benefit from reciprocity arrangements among Australian and New Zealand licensing authorities.

Clearly the objective of current legislation would not be met under this option.

Negative licensing

Under this approach there would be no 'point of entry' restrictions on who could practise, but those who reveal incompetence or negligence or violate other legal constraints could be placed on a disbarred list by the Department and prevented from continuing to practise.

Negative licensing relies heavily on voluntary adherence to accepted industry codes of practice and standards and on the ability of consumers or other tradesmen to recognise and report substandard work. This review has made repeated reference to the difficulty faced by consumers in this respect.

This approach, being an inherently reactive one, means that the full costs, both individual and third party, of choosing to use a less than competent tradesman may not be borne until long after the sanction of 'striking off' is to no effect - the worker having left NT.

A further difficulty is that plumbing and draining work is such that evidence of inferior work may not be detected for some time after the work has taken place. This would make it increasingly difficult to identify (and punish) the source of poor workmanship.

Most of the disadvantages of the 'no regulation' option would accompany negative licensing, including the inability to meet regulatory objectives, and it is not recommended.

Industry self regulation

A proposal along self regulatory lines was put forward jointly by the National Electricity Contractors Association (NECA) and the Master Plumbers Association (MPA) members of the Territory Construction Association (TCA) in 1997. Modelled on some aspects of the then Victorian Plumbing Industry Board (now Commission) it included recommendations for:

- a legislated, self funding Board comprising industry practitioners with the possibility of an independent chair, reporting directly to the Minister;
- Board powers to include those to suspend or withdraw licences;
- a self certifying licence compliance system backed up by certificates of compliance (purchased from the Board) and issued to consumers for jobs over \$500 value;
- compliance auditors contracted to the Board to conduct random audits;
- two tier licences – one for contractors and another for workers; and
- compulsory insurance for contractors.

In putting forward this proposal its proponents criticised the current system for, among other things, the absence of technical advice for tradesmen from the Board and the haphazard nature of auditing of the work done by the industry.

In our view many of the benefits that would accrue under this alternative model flow from the superior audit framework that it suggests. This greater assurance of standards, would, however, be through a framework and function that is not currently part of the Act under NCP review. It is however the proper subject of a more general review, the case for which is taken up in the recommendations.

Criticisms in the TCA proposal imply that the objectives of the current Act as they relate to the Board are not wide enough. To broaden the Act in this way would increase administration costs somewhat from their current level. The proposal which covered both the electrical and plumbing trades was costed at approximately \$280,000 per annum to administer, of which perhaps 20 percent could be attributed to the plumbing side. (There are less

than 500 licensed and registered in the plumbing trades compared to some 2500 electrical tradespersons.) This would mean administrative cost increases of less than \$50 000 if these costings are accurate.

There may be a case for changing the composition of the Board to increase industry practitioner representation with a view to giving it a better capacity to respond to industry queries and to keep abreast of changing industry practice in amending licensing requirements from time to time. PAWA in its submission has referred to the changing role of that authority, pointing out that

(t)he review of the *Water and Sewerage Act* is seeking to determine options for the removal of all regulatory and government policy functions from the Power and Water Authority so that it can concentrate on service delivery....In view of the removal of regulatory responsibilities it is no longer appropriate for an authority nominee to be required (as a member of the Board).

In view of the interface between the work of the plumbing trades for the public and the substantial assets of PAWA to which this work connects, Board representation of the Utilities Commissioner may still be appropriate.

However, changes of this kind do not amount to industry self regulation. There are dangers in a Licensing Board consisting exclusively of industry practitioners particularly for competition where there is an incentive to reduce market entry potential.

Registered Training Organisations will play a key role in the delivery of National Training Packages which will become increasingly important as a means of delivering competent tradespeople to the workforce. Representation of RTOs on the Board by persons familiar with these packages is desirable in the interests of increasing national uniformity of qualifications and standards.

One of the functions of the Board under the Act is to hear and deal with complaints. A Board which has the power to handle disputes involving claims by the public against practitioners is also vulnerable to charges of partiality if dominated by practitioners' representatives.

Industry self regulation is often construed as a 'less restrictive' means of achieving regulatory objectives. The review team recognises the benefits of a Board that is proactive in seeing best practice adopted in the NT. But there are dangers, if industry-only Bboards become dominated by the larger practitioners, that standards will be adopted that entail higher costs to consumers and/or which price some smaller trade businesses out of the

market. In either case apparently more light handed regulation does not have the desired effect from an NCP perspective.

Amendments to current licensing arrangements

Neither negative licensing nor industry self regulation have been demonstrated to be satisfactory means of achieving the objectives of the current legislation. There are, however, changes that could be made to the existing licensing and enforcement arrangements if the benefits of a government run licensing scheme for the plumbing trades were to be properly realised. These include:

- amendment to remove unnecessary references to Board-based certificates of competency and to give better recognition to evolving national approaches to competencies;
- a general review in the context of other legislative change to explore means of improving compliance by licensed tradesmen; and
- a review of the functions of the Board, broader publicisation of its powers to deal with complaints and a possible appointment by the Board of its own inspectors to investigate unlicensed operations or breaches of licensing conditions; and
- further examination of the case for issuing other trades with restricted plumbing licences.

7

Recommendations

SUB-STANDARD WORK IN THE PLUMBING TRADES can result from inadequate or inappropriate training and experience, inadequate supervision and deliberate cost cutting on methods and materials.

The Act under review is part of a regulatory framework that includes other legislation and regulation aimed at delivering benefits to the community by reducing the likelihood of workmanship that threatens public health and safety and puts water and sewerage systems at risk.

The wider costs of work that does not meet approved standards are:

- unquantifiable but likely to be significant, especially in urban areas and multiple occupancy buildings;
- not fully borne by the purchaser of the services; and
- in many cases not likely to emerge for some time.

The benefits of the restrictions on unfettered competition imposed by the Act, which are directed at avoiding these costs, are potentially large. However the capacity to reap these benefits is limited largely to the guarantees of competency provided by the entry conditions imposed by the Act. Enforcement is likely to be haphazard and conditional on other legislation.

Having established a case for restrictions on entry and behaviour in the trades what can be done to increase the net benefits flowing to the community?

On the objectives of the Act

The Act should be amended to specifically state its objectives.

Certain objectives can be inferred from parliamentary sources and from the provisions of the Act itself. They relate to providing safe service to

specified standards, with progression towards more uniform national standards in the industry while maintaining flexibility and affordability for NT's citizens who live outside the major urban areas.

The *Building Act*, by contrast, states its objectives, many of which are similar to those inferred above. They include objectives to establish, maintain and improve building standards, to facilitate national uniformity in the training and qualifications of certain building practitioners and the recognition of qualifications on a national basis.

In explicitly formulating the objectives of the *Plumbers and Drainers Licensing Act* consideration would need to be given to the scope of the Act and the role of the Board and whether it should be concerned with developing and progressing standards for the industry, as the MPA have suggested, or whether this should be left to some other body.

On the licensing requirements

The Act should be amended to give explicit recognition to the national competencies-based approach to trades qualifications.

The limitations imposed on entry which require journeyman registration applicants to have completed the relevant apprenticeships or to have 5 years experience of the industry (4 years for drainers), with an additional two years after registration for advanced tradesman status, are broadly equivalent to other states such as South Australia. They inevitably raise costs but to a purpose, and with offsetting benefits.

However, the Act should recognise the need for an increasingly flexible approach whereby national training packages are being developed to offer bundles of theoretical training and practical experience that are changing the nature and views of traditional apprenticeships. In the course of a general review of the Act, which is overdue given industry changes since 1983, it may be fruitful to consider redrafting the explicit references to years of experience to shift the emphasis to 'demonstrated competencies' certified by RTOs.

PAWA in its submission has said (p3)

There is significant overlap between the assessment and accreditation activities of the ...Board and the training, assessment and accreditation arrangements developed and endorsed by industry through the National Training Packages.

The practice of the Board issuing its own Certificates of Competence is not required under the Act, but 'entitlement' to these is required. In practice this seems to mean simply that the Board's delegated officer is satisfied that an applicants credentials satisfy the requirements of the Act. It may be possible therefore to remove reference to these Certificates.

On compliance and enforcement

The Act provides little support for delivering work of required standard. A general review of the Act should include examination of the case for requiring the signing of compliance certificates by licensed tradesmen.

The Act provides for inspections but these are delegated and the fact that apparently only one officer is involved suggests that auditing and inspection capability is inadequate. PAWA in its submission has said

Appropriate licensing requirements combined with effective enforcement and auditing (our italics) is a significant incentive for compliance with prescribed standards of work and safety. (PAWA submission, p. 2)

Requiring licensed plumbers to issue compliance certificates, as they must do in Victoria, which are subject to systematic random audit might be seen as raising costs to the industry and consumers. However, this needs to be weighed against the fact that the benefits of a licensing system with little or no compliance enforcement capacity are seriously diminished. Who should supply such certificates, receive completed certificates, set the standards of compliance and conduct audits would be a matter for a general review, which would need to take place against the background of changes to other relevant Acts.

The Act currently empowers the Board

To request and receive reports relating to inspections carried out under the Water Supply and Sewerage Act in respect of offences against that Act or the workmanship of licensed plumbers or drainers or journeymen. (Part II, Section 16g)

This will need to change and be consistent with the changed role envisaged for PAWA.

Whatever changes might be made to the *Water Supply and Sewerage Act*, there is a need to address the fact that currently certain *maintenance* work by plumbers and drainers falls outside the requirements for notification and inspection provided for in that Act. Consumers of these services have little protection against substandard work

Changes to the Act to enhance compliance require a general review conducted against the background of changes to *Water Supply and Sewerage Act* and the current provisions of the *Building Act* which specifies a role for 'certifying plumbers'.

On the role of the Board

Both the composition of the Board and its functions and powers have been criticised in the course of this review. The 1997 TCA proposal provided to the review team emphasised the lack of technical advice available and what it saw as the lack of incentive for the Board to act on complaints, and lack of capacity to act against illegal activity. It also said

If a Plumbing Contractor is working illegally it is unlikely that (the) Board can prevent them continuing.

Matters of illegal work, in the sense of *unlicensed* work would be dealt with by the Magistrates Court and the Board would not be involved.

As to better dealing with the detection and reporting of unlicensed operations, this again rests on the inspection of resources made available. There may be merit in having the Board appoint inspectors on its own behalf.

The review team was advised by the Department (personal communication) that there are very few complaints registered. However this may well be an indication that the public sees (incorrectly) that the Board has very limited choices in how it can deal with those licensed or registered personnel who breach provisions of the Act, with suspension or cancellation of a licence as being the only options. This may make complainants reluctant to come forward. That there are few complaints arising through the inspectorial system is unsurprising given its shortcomings.

The Board's wide range of options in dealing with complaints should be made more widely known.

A more proactive role in fostering knowledge and uptake of appropriate new techniques and materials as an appropriate matter for the Board has been put forward by some commentators. This extended role is more properly a matter for a general review, as the MPA acknowledges in its submission.

'Fit and proper person' consideration powers are given to the Board by the Act. These can be exercised:

- in the issue of registration certificates or licences; and
- in the cancellation of these.

When issuing a licence, the Board may

...make such inquiries regarding the qualifications and character of the applicant as it sees fit. (Part IV Section 24)

And the Board may cancel licences or certificates if the holder is

in the opinion of the Board no longer a fit and proper person to hold a registration card or licence. (Part IV Section 30 (C))

There is a high degree of discretion given to the Board in either case. The requirement that the Board give reasons for exclusion in writing and the right of appeal are the main mechanisms for protection against arbitrariness for those potentially excluded by these powers.

The objectives of conferring these protective powers on the Board would seem to be to protect consumers against the risk of criminal or inappropriate behaviour by tradesmen who have enhanced access to private property by virtue of their licence.

It is the review team's opinion that the provision of the Board with this power is only restrictive of competition of its existence or invocation by the Board discourages those from applying to do so, or if the power is used capriciously or unfairly, or is used against those who, for one reason or another, do not appeal against such decisions and would have good grounds for doing so.

In practice, it seems that refusals or cancellations on 'unfit person' grounds are rare and the anti-competitive effects through supply side restriction are likely to be minimal.

Because the powers are discretionary and investigations of 'fit and proper' credentials ostensibly only take place when there is prior cause for concern, the screening effects of this approach are likely to be very crude and some degree of false comfort may be given to those consumers who associate a licence with evidence of 'good character'.

Nevertheless, since the costs are also likely to be low. It seems undesirable to remove a power from the Board that it would genuinely need to exercise isolated cases.

The review team, while not receiving any evidence on the effectiveness of the 'fit and proper person' powers of the Board accepts that in certain circumstances, these powers can be an important safeguard, if accompanied by a well understood and easily accessible appeals mechanism. It was judged that removal of these powers would expose consumers to significant potential costs.

The 'fit and proper person' test powers of the Board should be retained provided appeal mechanisms are clear and accessible.

On restricted licences for other trades

The review team has been made aware of tensions between the plumbing and electrical trades. These arise out of the desire for electricians to do minor plumbing work to expedite electrical work on water-using appliances.

A general review of the Act, preferably concurrent with any such review of the *Electrical Workers and Contracts Act* should further examine the case for restricted plumbing licences to meet the needs of other trades.

Appendix

A

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;
- the 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 be conducted as a public review in accordance with the Guidelines for NCP legislation reviews document that has been endorsed by the NCC. In accordance with the appropriate review model used under these guidelines, the review shall consult with and take submissions from those organisations and individual stakeholders affected or regulated by the legislation, other interested Territory and Commonwealth Government organisations, other State and Territory regulatory and competition review authorities and members of the public.