

**COMPETITION POLICY REVIEW TEAM**  
**DEPARTMENT OF HUMAN SERVICES**  
**NATIONAL COMPETITION POLICY**

**LEGISLATION REVIEW**  
**CHIROPRACTORS ACT 1991**

**REPORT OF THE REVIEW PANEL**

**February 1999**

The views expressed in this report are the views of the Review Panel and do not represent the views of the South Australian Government. Any action taken in anticipation of the outcomes of the review process is at the risk of persons taking such action.

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## INTRODUCTION

The following report concerns the review of the *Chiropractors Act 1991*. The review is conducted in compliance with an obligation upon the South Australian Government under clause 5 of the Competition Principles Agreement. The Competition Principles Agreement is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995. These three agreements give effect to the National Competition Policy.

The obligation contained in clause 5 of the Competition Principles Agreement concerns the review, and where appropriate reform, of legislation which restricts competition. The guiding principle in undertaking this review is that the *Chiropractors Act* should not restrict competition unless:

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

and

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

The Terms of Reference for this review reflect the requirements of the Competition Principles Agreement. In addition, the Review Panel has considered whether administrative procedures required by the *Chiropractors Act* are unnecessary or impose an unwarranted burden on any person.

To satisfy the requirements of clause 5 of the Competition Principles Agreement the following documents have been reviewed:

*Chiropractors Act 1991*  
*Chiropractors Regulations 1992*

This report has been drafted by the Review Panel pursuant to the Terms of Reference, which are detailed in Appendix 1.

The report is in five parts. The first part concerns the central issues of the review. The second part details the analysis of specific provisions of the Act and regulations. The third part examines the administrative burdens imposed by the requirements of the Act. The fourth part lists the conclusions and recommendations of the Review Panel. Finally, Part 5 of the report contains various appendices, including the Terms of Reference.

References to “the Act” are references to the *Chiropractors Act 1991* and references to specific sections are references to sections of the Act unless indicated otherwise. References to “the regulations” are references to the *Chiropractors Regulations 1991* and references to specific regulations are references to regulations contained in the regulations unless otherwise indicated.



## CONSULTATION

This review was preceded by an issues paper which introduced the concepts of Competition Policy, and put forward a preliminary analysis of the Act from that perspective. Submissions were invited from consumers, government bodies, chiropractors, osteopaths, professional bodies, other health care professionals and all other parties interested in Competition Policy issues. An advertisement was placed in 'the Advertiser', copies of the issues paper were forwarded to organisations believed to have an interest in the matters raised, and a number were sent out on request. The Review Panel accepted verbal or written submissions, by telephone, fax, postage and e-mail. The closing date for submissions on the issues paper, after a consultation period of approximately four weeks, was 4 December 1998

A second consultation period, this time of two weeks, occurred in relation to the draft report. Where an undated submission is referred to in this report, the submission is in relation to the issues paper.

Appendix 6 contains the consultation list and Appendix 5 contains a list of submissions received by the Review Panel.

## PART 1: CENTRAL ISSUES

### 1.1 Purpose of Act

The objects section of the *Chiropractors Act* states that the Act is an “Act to provide for the registration of chiropractors and to regulate the practice of chiropractic; to repeal the *Chiropractors Act 1979*; and for other purposes”. The Act establishes the Chiropractors Board of South Australia to achieve these objectives, and empowers it to administer the Act. The overriding purpose of the Act is, or should be under competition principles, to protect the public by ensuring the practice of chiropractic is of a high standard, and is provided by persons who are identifiable within the community as possessing the necessary qualifications and/or experience to practise chiropractic. However this public protection purpose is not stated in the Act.

All submissions which addressed this issue agreed that the Act should state, in its objectives,  
that its purpose is to protect the public.

#### Recommendations

1. The objects section of the Act should be amended to read “An Act to protect the public by providing for the registration of chiropractors.....”.

### 1.2 Markets

The purpose of legislation review is to analyse the effect of legislative restrictions upon competition in markets. The identification of the relevant markets is imperative, therefore, for an accurate assessment of the impact of legislative restrictions upon competition. Competition within markets is competition in the broad sense of the ability to enter and participate in a market, not in the sense of individual rights to participate in a market. Competition policy, therefore, is not concerned with marginal behaviour, but concerned with broader competitive outcomes. The potential impact of legislated restrictions upon an individual’s participation in a market, therefore, is only relevant to legislation review where the impact on the individual is symptomatic of broader anti-competitive outcomes caused by the legislated restriction. This distinction is important in the context of reviewing legislation which empowers a body to take disciplinary action against individuals in a profession. The ability to restrict or prevent an individual’s participation in a profession is only relevant to legislation review if criteria for imposing such restrictions generally distorts competitive conduct in a market.

## **Chiropractic services**

The provision of chiropractic services is currently undertaken by chiropractors, osteopaths and, to a lesser extent, physiotherapists<sup>1</sup> and medical practitioners<sup>2</sup>. In general, any person who is not registered under the Act is not permitted to practise chiropractic for fee or reward<sup>3</sup>. “Chiropractic” is defined by section 4 of the Act to include:

- (a) the manipulation or adjustment for therapeutic purposes of the spinal column or joints of the human body;
- (b) osteopathy; or
- (c) any related service or advice.

This definition is not exhaustive of the services provided by chiropractors. Physiotherapists and medical practitioners are able to provide services which in substance come within the ordinary meaning of chiropractic services, as their services are not included within the Act’s definition of “chiropractic”<sup>4</sup>.

Chiropractors and osteopaths are both registered as “chiropractors” under the Act. A notation is made on the register as to which discipline the individual registrant is qualified in. There is an issue of how the delineation of the two disciplines should be achieved, although this is not a competition issue in the sense discussed in this report. In most other Australian States, the legislation refers to both chiropractors and osteopaths in the title, and establishes two separate registers. In Western Australia and Victoria, there are two separate Acts and consequently two separate Boards. Consideration must be given in this matter to the most effective method of regulating the profession to protect the public. At present in South Australia, there are 251 registered chiropractors, of which 183 are described as “chiropractor” on the register, 64 are described as “chiropractor and osteopath” and 4 are described as “osteopath”.

The distinction in practice between chiropractic and osteopathy is one of philosophy and treatment methods. Chiropractors generally focus on treatment via the nervous system and place a greater emphasis on spinal manipulation. Osteopaths take a holistic approach and undertake more soft tissue treatment. Both are required by the Act to complete a five-year degree. Chiropractors are qualified to take x-rays but osteopaths in general are not. Both chiropractors and osteopaths are recognised by most health funds and WorkCover. The employment opportunities for chiropractors are practically the same and both only practise in the private sector. While there are substantial overlaps in the services provided by chiropractors and osteopaths, they are considered to be separate and distinct professions.

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<sup>1</sup> ie a person registered under the *Physiotherapists Act 1991 (SA)*

<sup>2</sup> ie a person qualified under the *Medical Practitioners Act 1983 (SA)*

<sup>3</sup> section 25

<sup>4</sup> sub-section 25(2)

In this report, the term “chiropractor” is used to refer to chiropractors and osteopaths registered under the Act.

The three groups discussed above compete with each other, as well as within the groups, either as individuals or in practice with other professionals. Competition between chiropractors also occurs when an employer is seeking to employ a chiropractor.

The competition relevant to this review is, therefore, the competition between medical, physiotherapy and chiropractic practices, whether they be run by individuals, a partnership or a company registered under an Act. This report considers the extent to which the restrictions contained in the Act restrict this competition.

This is the broad notion of the market for chiropractic services. However the ability to substitute a service should also be considered. For example, substitution between the services of a (manipulative) physiotherapist and a chiropractor may occur when one considers spinal manipulation. However there are treatments that a manipulative physiotherapist is qualified to undertake that a chiropractor is not (and vice-versa). Therefore substitution does not always occur “both ways”. It is noted that the approach to a substitutable service usually varies between the professions. However, substitution occurs when a consumer can choose between providers, based upon differences in price, location, personal attributes, philosophies and treatment methods.

The market is a local market, as consumers will only travel a limited distance to obtain chiropractic treatment. Consumers will then choose between the substitutable services offered by the different chiropractic practices in their local area, based on differences such as cost, perceived competence and other factors.

### **Delineation**

Submissions were sought as to how the delineation of chiropractors and osteopaths should be achieved. All submissions addressing this issue conclude that a second Act should be enacted to regulate the practice of osteopathy, due to the distinct nature of the two professions. It is submitted that this would enhance competition<sup>5</sup>. It is emphasised that osteopathy is not a branch of chiropractic<sup>6</sup>. An alternative is suggested to be one Act, called the “Chiropractors and Osteopaths Act” with two separate registers and the distinction being clarified in the Act, by for example deleting or amending the definition<sup>7</sup>.

The Review Panel has concluded that it is not practical at this time to enact separate legislation to regulate osteopaths, as there are only four registered in South Australia and the costs of registration would therefore be prohibitive. However, the Board concedes that this is the most effective way of regulating the professions, and therefore recommends that the issue of two separate Acts be considered at a later

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<sup>5</sup> Chiropractors Board of SA submission

<sup>6</sup> Australian Osteopathy Association submission

<sup>7</sup> Australian Osteopathy Association submission



time, when the number of osteopaths has increased to such an extent as to make the separation financially viable. Any such establishment of a second Act and Board should only occur when the system can be self-supporting.

In the meantime, the Panel believes that the current Act should be amended to reflect the delineation of the two professions. This would not be a restriction on competition. Consumers, other professionals and government agencies will benefit by having increased knowledge about the individual chiropractor or osteopath and their qualifications and expertise. The two professions are currently seen as separate professions and therefore this should be reflected and clarified in the Act.

#### **Recommendations:**

2. The name of the Act should be changed to the “Chiropractors and Osteopaths Act”.
3. The definition of “chiropractic” be deleted and replaced by a definition of “chiropractor” as “a person registered as a chiropractor under this Act” and a definition of “osteopath” as “a person registered as an osteopath under this Act”.
4. Sub-section 4(3) should be retained.
5. There should be two separate registers for chiropractors and osteopaths, with provision to be registered on both. Qualifications and experience should be approved in the two separate categories.
6. References in the Act to “chiropractor” should be changed to “chiropractor or osteopath”.
7. The issue of introducing separate legislation to regulate osteopathy should be considered when the numbers of osteopaths registered in South Australia increase to such a number as to make separate legislation financially viable and such that the separate administration will be self-supporting.

### **Training market**

A requirement of registration is that the applicant have prescribed qualifications. The market for providing chiropractic training may be affected by the regulations prescribing qualifications and is therefore a market relevant to the review of the *Chiropractors Act*. Currently there are no institutions in South Australia that are able to provide chiropractic training. However the training market is still relevant as it relates to potential participants therein.

## **1.3 Restrictions**

Restrictions upon competition are of three types:

- (a) barriers to entering (or re-entering) markets;
- (b) restrictions on competition within markets; and
- (c) discrimination between market participants.

Each of the restrictions identified in the course of this review has been identified in terms of these theoretical types of restrictions. Such categorisation is useful for

determining the impact of the restriction upon competition in the relevant market. For the purposes of this review, restrictive provisions have been assessed as trivial, intermediate or serious. There is no definitive means of identifying the correct weight to be ascribed to restrictions. The following, however, is the “rule of thumb” utilised during the course of this review. A trivial restriction upon competition has only a minimal effect upon competition within a market. There is no clear-cut delineation between intermediate and serious restriction upon competition. Generally, however, an intermediate restriction upon competition is a restriction which imposes a substantial cost upon competition.

In this context “substantial” indicates other than a minimal effect upon competition. By comparison, a serious restriction is a restriction which prohibits entry or re-entry into a market, or prohibits certain conduct within a market.

## 1.4 Costs

Two categories of cost arise from the restrictions contained in the *Chiropractors Act*. Firstly, the restrictions upon registration and re-entry to the profession may cause the supply of chiropractors to be less than the demand therefor. In this context, restrictions upon conducting education and training may also contribute to a shortage of persons attaining sufficient qualifications to enable them to be registered. Restricting numbers of chiropractors causes the cost of chiropractic services to rise. This therefore, is a cost upon the community. Similarly, a shortfall in the numbers of chiropractors will reduce the efficiency and effectiveness of available chiropractic services. The numbers of persons practising chiropractic is the result of many factors which are discussed below.

The second category of cost is compliance costs. These are the costs of registration and of complying with standards of competency and professional conduct. These costs impact upon competition if they are sufficient to dissuade participation in the market for chiropractic services, or are substantial and passed on to consumers as an element of the price charged for chiropractic services.

## 1.5 Public Benefits

The professional regime established under the *Chiropractors Act* achieves significant public benefits. Restrictions upon entry to, and participation in the chiropractic profession ensure that persons claiming to be registered possess the requisite qualifications and experience to fulfil those roles. The provision of professional services is often done in an environment of “information asymmetry” between providers and consumers. Consumers often will judge a professional’s ability to provide a professional service on the basis of their manner and presentation. The consumer will often lack the knowledge to assess the quality of the service being provided or the knowledge or expertise of the practitioner.<sup>8</sup> In such an environment, Government has a legitimate role in ensuring that professionals meet minimum standards of competency. The public can be confident that a person holding

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<sup>8</sup> John Webster “Competition Policy and the Professions - The Issues” in the Australian Council of Professions *National Competition Policy and the Professions* at 5

themselves out to possess certain qualifications and expertise does in fact hold this level of qualifications and expertise.

The provision of information to consumers is, therefore, a significant factor in promoting competition. Deregulation of professions, without a concomitant increase in the knowledge of consumers, to enable them to make informed choices regarding service providers, will expose consumers to risks of harm without providing them with the means of avoiding this harm.

Systems of registration provide a mechanism for providing a public record of the practitioner within a profession and any restrictions upon their ability to practise. The compilation of such information and its provision to consumers is a significant public benefit.

Restrictions upon conduct within a profession also preserve public confidence in the standards of professional care provided by members of the chiropractic profession. For example, the requirement that professionals only operate within their area of professional competence. A broad notion of competency has been adopted by the Review Panel in undertaking this review. This includes not only criteria such as educational qualifications and practical experience but also includes issues of capacity to practise within the field competently. Requirements of capacity to practise within a field will vary between the professions. In some professions, such as chiropractic, capacity will include physical and mental capacity to carry out activities within the area of practice. Capacity will also include the ability to undertake functions within the area of competency which respects the duty of care and fiduciary duty to consumers.

## **1.6 Other States & Territories**

The practice of chiropractic is subject to legislative regulation in all other States and Territories of Australia. This legislation is similarly the subject of review under the Competition Principles Agreement. As at the date of this report only Victoria has formulated recommendations as to amendments to legislation. However, it is useful to consider the position in each of these States and Territories.

### **Victoria**

As a result of the review, the Victorian profession is now regulated by two pieces of legislation<sup>9</sup> which provide for the registration of chiropractors and osteopaths. The Acts confer title protection and practice protection in relation to the carrying out of any acts required, in any Act, to be carried out by chiropractors and osteopaths. The general structure of the model in Victoria is similar to South Australia, except that there are no ownership restrictions and there is provision for complaints to be dealt with by the Health Services Commission as well as the board.

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<sup>9</sup> *Chiropractors Registration Act 1996; Osteopaths Registration Act 1996*

## **New South Wales**

New South Wales has one Act<sup>10</sup> which provides for the registration as either an osteopath or a chiropractor. There are similar restrictions on title, practice, the conduct of registered persons and other activities as in South Australia. However, there are no ownership restrictions and complaints are dealt with by the Health Care Complaints Commission as well as the board.

## **Queensland**

The position in Queensland<sup>11</sup> is very similar to the South Australian model, with legislation to establish a system of registration of “chiropractors and osteopaths”. The restrictions contained in this legislation are similar to South Australia.

## **Tasmania**

Tasmania also has one Act<sup>12</sup>, with similar restrictions to South Australia. There is provision for the registration of chiropractors and osteopaths. There are no ownership restrictions in the Tasmanian model.

## **Western Australia**

Western Australia currently has one Act<sup>13</sup> regulating the chiropractic profession. However, it has introduced a second Act<sup>14</sup> to provide for the registration of osteopaths as a separate profession. The Acts establish title, but not practice, protection and do not contain ownership restrictions. In most other respects, the position is similar to that in South Australia.

## **Australian Capital Territory**

At present the situation in Australian Capital Territory is one Act<sup>15</sup> establishing a system of registration for chiropractors and osteopaths with similar restriction on title, practice, ownership and professional conduct to South Australia.

## **Northern Territory**

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<sup>10</sup> *Chiropractors & Osteopaths Act 1991*

<sup>11</sup> *Chiropractors & Osteopaths Act 1979*

<sup>12</sup> *Chiropractors & Osteopaths Registration Act 1997*

<sup>13</sup> *Chiropractors Act 1964*

<sup>14</sup> *Osteopaths Act 1997* - not yet enacted

<sup>15</sup> *Chiropractors & Osteopaths Act 1983*

Northern Territory has an omnibus Act to regulate many of the health professions<sup>16</sup> including osteopathy and chiropractic (as separate professions). Most of the controls therein are comparable to the South Australian Act. However, the Act only contains limited practice protection, does not contain ownership restrictions and provides a combined Tribunal for disciplinary proceedings.

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<sup>16</sup> *Health Practitioners & Allied Professionals Registration Act*

## PART 2: ANALYSIS OF RESTRICTIONS

### 2.1 Practice Protection

Practice Protection is the regime established by the Act to achieve its objectives, namely the protection of the public. These provisions reserve certain activities, such as the practise of chiropractic and use of the title “chiropractor” to registered persons. Persons are entitled to become registered if they fulfil certain requirements as to qualifications, experience, fitness and propriety etc<sup>17</sup>. Practice protection therefore relates to qualifications and/or experience required to enter the profession, and the costs of practice protection are the costs of registration.

#### 2.1.1 Reservation of Practice

Section 25 provides that a person<sup>18</sup> must not practise chiropractic for fee or reward unless that person is registered or that person practises chiropractic under the supervision of a registered chiropractor in connection with a prescribed course of training<sup>19</sup>. Medical practitioners and physiotherapists are exempt from this provision as nothing done by them in the ordinary course of their professional practice constitutes the practice of chiropractic<sup>20</sup>. “Chiropractic” is defined by section 4 to include:

- (a) the manipulation or adjustment for therapeutic purposes of the spinal column or joints of the human body;
- (b) osteopathy; or
- (c) any related service or advice.

This section reserves the practice of chiropractic to chiropractors and certain students of chiropractic. The reservation of practice is a barrier to entry into the market for chiropractic services. It is a serious restriction on competition.

There is public benefit in consumers having confidence that persons who provide certain true statement have the qualifications and expertise to provide that treatment. The degree of risk involved in such treatment is relevant.

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<sup>17</sup> These requirements are discussed in part 2.2

<sup>18</sup> “person” means either a natural person or a body corporate. For discussion on corporate practitioners see part 2.3

<sup>19</sup> the prescribed course are contained in regulation 15

<sup>20</sup> sub-section 25(2)

It is accepted that the practice of chiropractic carries with it significant risk, and has been reported to cause death<sup>21</sup>. The most likely procedure to cause irreversible complications, if not performed competently, is spinal manipulation<sup>22</sup>. It is therefore appropriate to protect the public in some manner. A summary of risks of chiropractic is contained in Appendix 2. The Review Panel believes that the only area of the practice of chiropractic which may put the public at risk of irreversible harm, if performed incompetently, is joint (including spinal) manipulation and adjustment.

The Review Panel is required to consider which areas of practice, if any, should be reserved to registered persons. Interstate positions are to legislate to reserve the use of certain titles only (as discussed in part 2.1.2). This model is in effect in Western Australia and Victoria. Alternatively, the legislation may reserve the practice of only those procedures or treatments which carry significant risks. An example of this model is the *Chiropractors and Osteopaths Act 1991 (NSW)*, which restricts, only, the manipulation of “the joints of the spinal column including its immediate articulation”<sup>23</sup> to registered and certain exempted persons. However, this practice is restricted regardless of whether it is for fee or reward.

All the submissions which referred to this issue argued that practice protection should be retained in its entirety, due to the risks involved. However the Review Panel has received no evidence that the entire practice of chiropractic contains a risk of irreversible harm.

The costs of reservation of practice to the public are the costs of registration as discussed in part 2.2, and are justified if the system of registration is necessary to maintain public protection and confidence in the chiropractic profession.

The Review Panel concludes that the public benefit outweighs the costs of practice protection, but only as it relates to “the manipulation or adjustment for therapeutic purposes of the spinal column or joints of the human body”. Therefore, only this practice should be reserved to registered persons and students. Therefore, there is no need to retain a definition of “chiropractic” in the Act and the Panel confirms its recommendation that it be removed.

### **Alternatives**

The Review Panel considered alternative means to achieve protection of the public conferred by the reservation of practice, such as protection under the common law, the *Fair Trading Act 1987 (South Australia)* and the *Trade Practices Act 1974 (Commonwealth)*. These Acts contain similar consumer

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<sup>21</sup> For example, Scott Haldemann *Principles and Practice of Chiropractic* (2nd Ed)

<sup>22</sup> Henderson D, Chapman-Smith D Mior S, Vernon H (Eds) *Clinical Guidelines for Chiropractic Practice in Canada - Proceedings of a Consensus Conference Commissioned by the Canadian Chiropractic Association* (April 1993)

<sup>23</sup> section 4

protection provisions, but those in the *Trade Practices Act* apply to companies and the *Fair Trading Act* to natural persons and unincorporated associations.

There is also protection under the common law, most importantly claims in negligence. This requires the consumer to initiate legal action against the registered person, which they may not be in a financial position to do.

These alternatives generally focus on compensation or punishment, rather than protecting the public by attempting to remove the potential for harm. In the case of chiropractic and other health professions, financial compensation does not properly compensate for an irreversible injury. The importance of prevention is therefore greater.

Other alternatives which focus on prevention are legislation such as the *Public and Environmental Health Act 1987 (SA)* and the *Radiation Protection and Control Act 1982(SA)*. While these Acts do provide some protection, they are specific to certain areas of practice and are not therefore not adequate in themselves.

Self-regulation is not an option as an alternative to reservation of practice as it can only regulate persons who voluntarily become members of an association and therefore become subject to its competency and other requirements. Whilst market forces will encourage the majority of professionals to become members, there will always be persons practising a profession who are not members and therefore whose competence is not subject to scrutiny other than by the means discussed above.

The Review Panel has therefore concluded that these alternatives would not protect the public sufficiently due to the nature of chiropractic and the significant degree of risk involved.

Medical practitioners and physiotherapists should continue to be exempt from the practice protection provision of the Act, because the Review Panel considers them to be adequately trained and competent to undertake spinal and other joint manipulation and adjustment, due their requirements for registration under the respective legislation.

Two submissions<sup>24</sup> suggested that the term “for fee or reward” should be deleted from section 25. The Chiropractic Board of South Australia cited the example<sup>25</sup> of a naturopath/acupuncturist who argued that the performance of spinal manipulation was an added service not attracting a fee or reward.

The Review Panel concedes that this is an important issue that should be addressed. However, it is not within the terms of reference of this review and the Panel does not have sufficient evidence before it to properly consider this issue.

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<sup>24</sup> Chiropractors Board of SA; Chiropractors Association of Australia

<sup>25</sup> at page 3



### Recommendations

8. Section 25(1) should be amended by deleting “a person must not practise chiropractic” and replacing it with “a person must not manipulate or adjust for therapeutic purposes the spinal column or joints of the human body”.
9. The exemption for medical practitioners and physiotherapists from the operation of ss25(1) should remain.

### 2.1.2 Reservation of title

Title reservation is achieved by sections 26 and 27 along with the registration requirements discussed below.

Section 26 prevents the holding out of a person who is not registered under the Act as being so registered.

Section 27 prevents an unregistered person from using a prescribed word, or its derivatives, to describe him or herself or a service that he or she provides. Currently the prescribed words are “chiropractor”, “osteopath”, “spinal therapist” and “manipulative therapist”. However a physiotherapist may use the title “manipulative therapist”.

Any assessment of restrictions associated with reservation of title involves an assessment of the qualifications and/or experience required to utilise the title, and whether this level of expertise demands that the profession be recognised by the public through the use of a reserved title. As the Review Panel concludes in Part 2.2, the requirements for registration are necessary to protect the public.

This is a restriction on conduct of persons in the market for chiropractic services. A barrier to entry to the market is created by other legislation<sup>26</sup> or decisions by employers.

All submissions which addressed this issue agreed that title protection is necessary to protect the public interest. The public benefit arising from title protection is the confidence conferred on consumers that a particular chiropractor has qualifications and expertise rendering that person competent, as determined by the Board, to provide chiropractic treatment. Title reservation aims at ensuring demarcations recognisable by the public between registered and unregistered persons, such as massage therapists. This benefits extends to other legislation or schemes such as Workcover which refer to “registered chiropractors”. The protection of the public from harm is the overriding benefit of title protection.

The costs of title protection are the costs of registration, as discussed below. The Review Panel concludes that the public benefits outweigh the costs of title restriction and that, therefore, the restrictions contained in sections 26 and 27 are justified in the public interest.

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<sup>26</sup> For example, *Workers Rehabilitation and Compensation Act 1982 (SA)*

The alternatives to legislating to reserve titles include self-regulation, whereby the membership of a professional body entitles the member to use a certain title, as in the case of the title “Certified Practising Accountant”. However, such a system is only appropriate where there is no reservation of practice required. Membership of such a body could not be compulsory and therefore is not effective to achieve the reservation of practice as in the current system under the Act. In addition, legislative title protection is important for third parties, such as health insurance funds and government agencies to be able to readily identify providers and determine eligibility to provide particular services. Self-regulation could not achieve this.

The Panel is of the opinion that in the case of chiropractic, reservation of practice as well as reservation of title is required since the risk of harm or injury is too great, therefore self-regulation would not be sufficient.

Therefore, the Panel recommends that sections 26 and 27 are retained.

The submission of the Chiropractors Board of SA<sup>27</sup> recommended that the words “spinal manipulation” and “spinal adjustment” be included as prescribed words, because the Board has had difficulties in relation to the prosecution of unregistered persons using these terms to describe themselves and/or their service. The Review Panel believes that it is the intention of the Act that these words should be reserved to registered persons, as derivatives of the currently prescribed words. Therefore these words should be prescribed to clarify this intention. The Panel considers this to be a trivial restriction.

#### **Recommendations:**

10. Use of the words “spinal manipulation” and “spinal adjustment” should be reserved to registered persons and therefore should be prescribed words under section 27.

### **2.1.3 Other Practice Protection Provisions**

#### ***Board’s approval required if chiropractor has not practised for five years***

Section 28 provides that a registered chiropractor who has not practised chiropractic for five years or more must not practise chiropractic for fee or reward without first obtaining the approval of the Board.

The Board may, before granting its approval, require the chiropractor to undertake a refresher course or to obtain specified qualifications or experience. The Board may also make its approval subject to conditions restricting the chiropractor’s right to practise. This is an intermediate restriction upon competition.

There is public benefit in ensuring the skills and knowledge of chiropractors are current.

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<sup>27</sup> at page 14

The cost to the chiropractor who has not practised for five years may be justified if the conditions imposed or the refresher, or other, course required to be undertaken is necessary for the protection of the public and the maintenance of chiropractic standards.

Submissions were sought as to whether there is a public benefit in requiring chiropractors who have not practised for 5 or more years to undergo formal training, and whether other criteria should be used to assess competency.

The submissions which addressed this issue<sup>28</sup> agreed that this requirement is necessary to protect the public interest. The Review Panel agrees that the public benefit outweighs the costs of this restriction. There are no adequate alternatives to this restriction to protect the public in this manner.

One submission<sup>29</sup> suggested that to increase flexibility, the Board be able to require a person, who comes within the scope of this section, to undertake an examination. The Review Panel considers this to be a good means to enhance re-entry to the market, by allowing for more flexibility for a person to demonstrate his or her competency. The Panel concedes that there is currently no body to conduct such an examination, but recommends that the Board take that issue upon itself to arrange.

#### **Recommendations**

11. Section 28(2) should be amended to permit the Board to require a chiropractor to pass an examination approved by the Board.

#### **Practitioners to be indemnified against loss**

Section 29 prohibits a person from practising as a chiropractor unless he or she is insured by a person approved by the Board and to an extent approved by the Board against civil liabilities that might be incurred by that person in the course of their practice.

This restricts a person's ability to practise chiropractic and acts as a barrier to entry to the chiropractic profession.

There is public benefit in ensuring registered persons are adequately insured to cover any liabilities incurred by them against a member of the public.

Anti-competitive costs only arise from this section if the cost of the insurance deters potential registered persons from practising and thereby significantly reduces the number of chiropractors entering the profession. The Panel considers it to be prudent business practice for chiropractor to have adequate indemnity insurance and understands that most would do so in any event.

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<sup>28</sup> Chiropractors Board of South Australia, Australian Osteopaths Association

<sup>29</sup> Chiropractors Board of South Australia at page 15

For a member of the Chiropractors Association of Australia, the cost of indemnity insurance is \$530 (less 10% discount for continuing education) per annum.

The submissions which addressed this issue agreed that the cost of such insurance does not restrict entry to the market. Therefore, the Panel concludes that this is a trivial restriction and that section 29 should be retained.

## 2.2 Registration Requirements

The registration requirements of the *Chiropractors Act* do not, of themselves, create a restriction on competition. However, as the basis of the practice protection regime established by the Act, the costs of these requirements need to be assessed.

### 2.2.1 Qualifications for Registration

A natural person or a company may apply to be registered as a chiropractor under the Act. An applicant shall be registered where that person meets the criteria for registration. Pursuant to section 18, the relevant criteria for a natural person<sup>30</sup> are:

- (a) is of or above the age of 18 years;
- (b) is a fit and proper person to be so registered;
- (c) has prescribed qualifications and experience in the practice of chiropractic;
- (d) fulfils all other requirements prescribed by the regulations.

#### **Of or above the age of 18 years**

This requirement is not of itself a barrier to entry, as the qualification requirements generally include the completion of a five year tertiary course, so the applicant will, as a general rule, necessarily be above the age of 18 years. It is therefore a trivial restriction.

However, one submission<sup>31</sup> suggested that this requirement be removed from the Act, as it superfluous. The Review Panel agrees.

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<sup>30</sup> The requirements of registration of a company are considered in part 2.3

<sup>31</sup> Chiropractors Board of South Australia at page 7, with which the Australian Osteopaths Association agreed.

## Recommendations

12. The requirement in section 18(1)(a) that a person be of or above the age of 18 years should be removed.

### **Fit and proper person**

The “fit and proper person” standard may constitute an unjustifiable restriction upon competition depending upon how this standard is interpreted and applied by the Board.

There is public benefit in only permitting fit and proper persons to practise chiropractic. This benefit lies in the protection of the public from persons who have previously been guilty of certain behaviour or are likely to endanger public safety by, for example, not being medically fit to practise.

There are costs to the community of reducing the numbers of chiropractors available and thereby increasing the costs of such services. However, as long as the Board only excludes those persons who are potential dangers to public safety, these costs are justified in the public interest. The Review Panel understands that the Board, when determining an application for registration, will take into account the applicant’s competency, honesty, knowledge, ability, character, attitudes and anything else that may be relevant to the public’s expectations of what constitutes a person who is fit and proper to practise chiropractic. The most common applicants for registration for which the “fit and proper person” requirement is an issue are applicants with criminal convictions.

The “level” of this standard is also relevant. The Board does not need to limit registration to people who are excellent or perfect<sup>32</sup>, as long as the applicant meets the standard expected by the public.

In addition, the Board’s criteria must be transparent. The appeal processes discussed in part 2.5.2 of this report help to ensure this. However, it is also important that the public and the profession are aware of the standard applied by the Board.

Submissions were sought on whether the fit and proper person requirement should be amended or replaced, for example with a more objective standard. However all the submissions which addressed this issue agreed that this standard is sufficient. The Panel is of the opinion that “fit and proper person” is transparent and well understood by the public and the profession. However, the Review Panel considers that it would be helpful for the Board to publish its criteria in its “Guidelines On Registration”<sup>33</sup>.

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<sup>32</sup> *Wright v Teachers Registration Board* (1983) 111 LSJS 177

<sup>33</sup> see part 2.5.2

Set criteria with no discretion given to the Board may have the effect of excluding otherwise competent or proper persons from practice or allowing others, who may have behaved improperly but against whom a criminal conviction has not been obtained for some reason, to practise chiropractic. Further, the Panel received no evidence of the Board interpreting this section in an inappropriate or anti-competitive manner.

All other Australian States and Territories require a similar standard for registration of chiropractors, for example “good character”<sup>34</sup>, “good fame and character and medically fit to practise”<sup>35</sup> and “not alcoholic or drug dependent, character in the public interest, no impairment and competent in English”<sup>36</sup>. Most other South Australian legislation providing for the registration of health professionals has the “fit and proper person” standard or the “good fame and character” standard, which is likely to be amended to the “fit and proper” standard.

Therefore the Panel recommends that the “fit and proper person” requirement be retained.

One submission<sup>37</sup> recommended that there be a requirement that a person is “fit and proper” upon renewing their registration. This would simply enable the Board to require registered persons to state upon applying to re-register whether in the previous year they were convicted of any criminal offences, became bankrupt or provide similar information. This allows the Board to refuse to re-register or impose conditions on registration on the grounds that a person is no longer fit and proper, rather than taking disciplinary action against that person when and if the Board discovers such conduct.

The Panel considers this to be a trivial restriction, and therefore that it should be introduced.

#### **Recommendations:**

13. A registered person should be required to satisfy the Board that they are (still) a “fit and proper” person in order for that person’s registration to be renewed.

### **Qualifications and Experience**

Criteria for registration based upon objective standards of competency, while being restrictions upon entering a profession, may be justifiable in terms of protecting the public where there is a risk of harm to the public from persons

<sup>34</sup> ACT, Victorian and NSW legislation.

<sup>35</sup> Queensland and Tasmanian legislation

<sup>36</sup> Victorian legislation

<sup>37</sup> Chiropractors Board of SA submission at 8

who are not competent to provide certain services. A threshold of risk which will justify registration requirements across all professions cannot be quantified as the risks associated with “holding out” in different professions cannot be compared in this manner. The public benefits of registration must be weighed against the costs of registration peculiar to that profession. In relation to the services provided by chiropractors, this degree of risk is significant. Therefore persons holding themselves out as registered persons should be competent in the delivery of chiropractic services. Attaining a qualification which, in the opinion of the Board, is necessary to ensure competency is an objective criteria for attaining registration.

Regulation 11 prescribes the qualifications and experience for registration of a natural person. These include the completion of one of the courses listed in Schedule 1 (which includes interstate and overseas courses) plus at least 12 months full-time postgraduate clinical experience in certain areas.

The requirement for the completion of a course is a restriction on competition, the costs of which may be justified if the content of the course is necessary for the applicant to attain the competency required to practise chiropractic. This is an intermediate restriction on competition. In addition, the two South Australian courses listed in Schedule 1 are no longer available. Accordingly South Australian students must look interstate to obtain the qualifications necessary to be registered in South Australia. This clearly adds to the individual’s cost to become registered.

Similarly, requirements for clinical experience are an intermediate form of restriction on the entry of a person to the chiropractic profession. The costs associated with obtaining such experience may be justified if the experience is required to become competent in the practice of chiropractic. The requirement for post-graduate clinical experience does not exist in the other States or Territories. The practice, therefore, in South Australia is for new graduates to become registered interstate and then apply for registration in South Australia under mutual recognition (discussed below). This practice makes this clause practically redundant and an unnecessary cost.

The Review Panel concludes that there is minimal public benefit in the requirement for 12 months post-graduate clinical experience and that therefore this requirement should be removed. The three submissions which addressed this issue<sup>38</sup> agreed that the requirement should be removed.

### **Recommendations**

14. The requirement for 12 months full-time postgraduate clinical experience, regulation 11(b), should be removed.

The prescribing of qualifications required for registration under the Act is, in addition, a restriction on entry to and conduct within the market for chiropractic training courses. This is an intermediate restriction However if there is public

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<sup>38</sup> Chiropractors Board of SA; Chiropractors Assoc of Australia (SA Branch); Australian Osteopaths Assoc

benefit in the registration regime established by the Act, this restriction confers a net benefit to the public.

Anti-competitive costs in the training market will only arise if restricting the number of training courses available substantially reduces the number of qualified chiropractic professionals in the market. The Panel notes that there are currently no training providers in South Australia. However, it has no evidence as to whether any potential trainers exist but whose course has failed to have been prescribed. The public would certainly benefit from the existence of at least one training course in South Australia.

The Review Panel concludes the benefits outweigh the costs of having set qualifications to ensure competence of registered persons. In considering the alternatives, the Review Panel considered one submission<sup>39</sup> which suggested that “prescribed qualifications” be replaced with “qualifications approved by the Board” to “accommodate change in the market-place while simultaneously maintaining standards of training and portable in South Australia”. The Panel agrees that this would indeed increase flexibility for the training market and that therefore the change should be made. However, as this is a discretionary function, there should be an appeal against such decisions. Further, the Board should publish a list of approved qualifications and experience, along with guidelines as to how it makes these decisions.

#### **Recommendations:**

15. The requirement for “prescribed qualifications and experience” in section 18(c) should be amended to “qualifications and experienced approved by the Board”.

16. The Board should publish and make available to the public and registered persons a list of approved qualifications in the *South Australian Government Gazette*.

17. There should be an appeal from decisions of the Board to approve or to refuse to approve certain qualifications and experience.

### **All other prescribed requirements**

This term may enable the regulations to require attributes which do not relate to the competency of applicants. Such attributes may be unjustifiable restrictions on competition. However the regulations do not currently prescribe any other requirements for registration. Therefore this requirement is a trivial restriction.

### **2.2.2 Application for Registration**

Under section 19, an application for registration must be made in the prescribed manner and form and must be accompanied by the prescribed application fee.

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<sup>39</sup> Chiropractors Board of SA at 9



Similarly an application for renewal of registration must be in the prescribed manner and form and be accompanied by the prescribed fee<sup>40</sup>.

The prescribed forms are set out in Schedules 2 and 3 to the Regulations. The forms are not onerous in their requirements and accordingly would be unlikely to create a barrier to entering the profession. As such the forms constitute only a trivial restriction upon competition.

The Chiropractors Board of SA, in its submission<sup>41</sup> recommends that both forms include authorisation for police information, medial facilities and educational institutions, to enable it to obtain information in relation to the “fit and proper” person requirement. The Panel agrees that it is important for the Board to be able to verify statements made by an applicant for registration or renewal of registration. However, the potential for obtaining medical and educational information allows for information to be obtained that may be personal and may not be relevant to the applicant’s registration. Any police information, however, is relevant. Therefore, although this is not strictly and issue within the terms of reference for this review, the Panel concludes that this addition should be made to the application forms.

#### **Recommendations:**

18. The forms contained in Schedules 2 and 3 to the Regulations should be amended to include an authority for the Board to obtain information about criminal convictions from police authorities.

Regulation 14 allows the Board to set fees for registration and renewal of registration, as well as other purposes. The application fee may constitute a restriction if it dissuades entry to the profession or is substantial and passed on to consumers. For natural persons under the age of 70 years, the current application fee for registration is \$390 and the fee for renewal of registration is \$360. The full schedule of fees is contained in Appendix 3.

A fee constitutes a restriction upon entry into the chiropractic profession. It is likely to be a trivial restriction unless it is unreasonably high and thereby dissuades entry or re-entry to the profession. The current annual practice fee for chiropractors in South Australia is significantly higher than some interstate fees. However, South Australia has reduced fees for locums, new graduates and persons over 70 years of age, which are substantially less than in other States. A comparative table of fees and number of registrants is contained in Appendix 4.

The differences in the registration fees in different jurisdictions reflect the differences in the income and expenditure of the regulatory authorities in each

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<sup>40</sup> section 22

<sup>41</sup> at page 26

jurisdiction, the priorities of the regulatory body and the attitudes of the community within the jurisdiction to regulation. In particular, the number of registered persons and funding structure in each State should be considered. In South Australia, the Board is completely self - funded, except where a disciplinary matter is beyond its normal financial resources, whereas in other States, the Board may be underwritten by government or share administration with another registration Board.

The public benefit of a fee relates to recovery of the costs of administering the Act. As there is public benefit in the regime established under the Act, the registration fee can be seen as a justifiable restriction. The object of a system of registration is to not only ensure the competence of persons entering the profession but to provide a record of information available to the public and employers in relation to the registered person's qualifications, conditions on registration and any disciplinary action taken against that person. The amount of a fee is referable to the Board fulfilling its statutory roles under the Act.

Submissions were sought as to whether the fee for registration restricts entry into the chiropractic profession. None of the submissions received believed that it does.

The Review Panel concludes that the requirement of a fee is a trivial restriction only and is justified, subject to the system of registration being justified, in the public interest.

The only alternatives to the fee would be some other form of funding for the administration of the Act, such as government funding. This would impose a greater cost upon the community and therefore the fee requirement should be retained.

### **2.2.3 Limited Registration**

Section 21 enables limited registration where, in the opinion of the Board, the applicant for registration lacks the necessary qualifications or experience or other prescribed requirements, or fulfils these requirements but is not a fit and proper person, for unrestricted registration.

Under sub-section 21(3), the Board may impose restrictions upon the places and times in which a registered person may practise chiropractic, limit the areas of chiropractic in which that person may practise, limit the period of registration, or impose any other condition as the Board thinks fit. This provision enables the Board to place a restriction upon a person's conduct within the chiropractic profession.

The costs of this restriction are minimised if the Board utilises criteria which accords with community and professional views on whether a person should be entitled to unrestricted registration. This restriction may be either trivial or intermediate depending on the conditions placed upon practice.

Examples of where the Board utilises this power include to limit the period for which registration is granted in the case of a locum. Another condition which

may be imposed is a supervision requirement for persons who have not practised chiropractic for a lengthy period and are granted limited registration in order to update their skills.

This is a trivial restriction upon competition.

There is a benefit to the public in limitations being placed upon the registration of persons where the skills or expertise of the person are insufficient for them to qualify for unrestricted registration. This provision actually may enhance involvement in the chiropractic profession by enabling the Board to provide limited registration to a person who otherwise would not qualify for registration and, therefore, would be prevented from practising as a chiropractor.

Provided that the criteria which the Board apply are based upon competency, and are applied consistently there are minimal anti-competitive costs of complying with this section. While conditional registration is a restriction upon the individual professional, it is not an unjustifiable restriction upon competition in the market for chiropractic services.

There are no alternatives to this provision which would adequately protect the public, and therefore this provision should be retained.

However, the Review Panel considers that it would be helpful to publish its criteria for imposing conditions in its "Guidelines On Registration"<sup>42</sup>.

## **2.2.4 Restriction of Movement of Chiropractors Between Jurisdictions**

### **Mutual Recognition**

Systems of registration may inhibit movement of chiropractors between jurisdictions, where chiropractors registered in another jurisdiction are unable to register in South Australia. Such a restriction reduces the pool of chiropractors within South Australia and thereby reduces the level of competition between chiropractors. Registration regimes established under the *Chiropractors Act*, however, do not restrict movement of chiropractors between jurisdictions due to the operation of the system of Mutual Recognition established under the *Mutual Recognition Act 1992 (Commonwealth)*.

Mutual Recognition enables chiropractors in equivalent occupations interstate to be registered in South Australia. The object of the scheme is, essentially, that if a chiropractor satisfies the requirements for registration interstate that person will be registered in South Australia without further training. A person registered pursuant to this regime is subject to the same laws regarding practice as other chiropractors registered in South Australia.

The *Mutual Recognition Act* (sub-section 20(5)) does preserve the ability of the Board to impose conditions upon practice provided these conditions do not arise from the fact that the applicant is registered pursuant to the Mutual

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<sup>42</sup> see part 2.5.2

Recognition Scheme. While the scheme alleviates constraints upon the registration of chiropractors from interstate, the scheme does not, therefore, alter the restrictions embodied within the conditions imposed by the Board upon practice. The impact of these conditions upon competition are analysed above.

### **Consequences of action against registered chiropractors in other jurisdictions**

Section 45 provides that where a registered chiropractor's right to practise is suspended or cancelled due to action against that person in another State or Territory, then that persons registration under the Act is automatically suspended or cancelled, unless the Board determines otherwise.

This is a restriction on the entry to the chiropractic profession and therefore an intermediate restriction upon competition. However the public benefit will outweigh the cost, if the person is barred from entering the South Australian market for chiropractic services due to public benefit reasons determined interstate. There are no alternatives to such a restriction to protect the public.

## **2.3 Ownership and Business Restrictions**

### **2.3.1 Registration of Companies**

Section 25, as discussed in part 2.1.2, also applies to bodies corporate. The section creates a requirement that incorporated chiropractic practices, in order to practise chiropractic for fee or reward, be registered under the Act.

Sub-section 18(2) provides for the registration of a company as a chiropractor if its memorandum and articles of association comply with certain conditions in relation to directors, members, voting rights etc. In particular, sub-section 18(2) restricts the ownership of chiropractic practices to chiropractors and their prescribed relatives. The Board must be satisfied that the memorandum and articles of association comply with these conditions and are "otherwise appropriate" to a company formed for the purpose of practising as a chiropractor.

Sections 31 to 36 contain restrictions on the conduct of companies, including administrative requirements and restrictions on the number of chiropractors a registered company may employ.

These sections constitute a barrier to entering the chiropractic profession (as a director/shareholder) and on the conduct of incorporated chiropractic practices. They also enable the Board to potentially restrict competition depending on its interpretation of "otherwise appropriate". This is a serious restriction upon competition.

There may be public benefit in having appropriately qualified persons own and run a chiropractic practice and in particular be responsible for the safety and

public protection issues of a practice<sup>43</sup>. If the Board is to discipline a company in relation to, for example, unprofessional conduct, it may be important for the Board to be able to discipline the directors also.

There is an argument that there may be a benefit to the public in preventing the over commercialisation of the chiropractic profession<sup>44</sup>. The object of these sections may be to prevent the establishment of large chiropractic companies and “chain-stores”. There is an argument that these types of practices may tend to focus on profit-margins ahead of their duty to their patients. However the Review Panel can see no reason why unregistered persons would have lower professional and ethical standards than registered persons. In any event, it will always be up to the individual registered person to maintain his or her own standards of professionalism.

The anti-competitive costs of this section include that the fees charged for chiropractic services may be higher than in a situation where ownership is unrestricted, due to, for example, economies of scale. In addition, there is a cost to the public in not permitting the establishment of multidisciplinary practices which maintain a focus on total health care. There is an additional cost to the public in excluding unregistered persons with business and managerial skills.

The Panel notes that Australian Capital Territory and Queensland are the only Australian States and Territories which have legislation which restricts ownership of chiropractic companies.

The Review Panel concludes that the ownership restrictions are not justified and should be removed. Of course, only qualified persons should be permitted to perform chiropractic treatment. The reservation of spinal and joint manipulation and adjustments referred to in part 2.1.1 has this effect.

The Review Panel is of the opinion that there should be some responsibility by an (unregistered) employer of a registered person to maintain a competent standard of chiropractic treatment. This is not completely covered by existing law and could lead to problems such as attempts by employers to influence registered persons to provide inadequate service or over-service. The Victorian review of its dentist legislation recommends that upon removing all ownership restrictions an offence should be created “for an employer to unduly influence an employee to perform dentistry in a manner detrimental to the welfare of the consumer”<sup>45</sup>. The Review Panel believes that this provision should also be included in the South Australian Act<sup>46</sup>.

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<sup>43</sup> For example, Chiropractors Association of Australia (SA Branch) submission

<sup>44</sup> For example, Australian Osteopaths submission at 8

<sup>45</sup> Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998) at 19

<sup>46</sup> as suggested by the Chiropractors Board of SA submission

This would introduce a restriction on the conduct of employers of chiropractors, but the restriction on competition is assessed to be trivial. The public benefit is clearly to protect the public by preventing the possible problems discussed above. There may be some compliance costs to the employer which could be passed on to the consumer, but these costs are minimal.

The alternatives to this provision would be to retain the registration requirement for companies, but to remove all the requirements as to members and conduct. Then, the Board could discipline the company as a registered person. The Review Panel believes that this alternative is not practical and places too much of a restriction on the company. The other alternative is to leave the regulation of companies to the general law such as the *Trade Practices Act*, as discussed in part 2.1.1. The Review Panel considers that due to the risks of irreversible harm<sup>47</sup> these alternatives are not adequate in themselves to protect the public.

To assist with the enforcement of these provisions, chiropractors should be specifically required to provide the Board with addresses of all premises in which they practise as well as the name and address of their employer, upon registering and re-registering. This would not be a restriction on competition and would not impose an unwarranted burden on registered persons.

#### **Recommendations:**

19. All ownership restrictions, direct and indirect, contained in the Act should be removed.
20. It should be an offence for an employer to unduly influence an employee to perform chiropractic in a manner detrimental to the welfare of the consumer.
21. Registered persons should be required to provide the Board with the address of all premises in which they practise and the name and address of their employer, upon registering and re-registering.

### **2.3.2 Approval of names**

Regulation 19 provides that a registered chiropractor must not practise under a name (whether a company name or a business name) unless that name has first been approved by the Board. This gives the Board power to potentially restrict the conduct of chiropractors and hence restrict competition. This is an intermediate restriction.

The public benefit of such a restriction may be to prevent misleading, deceptive, sensational or other such names. However this is not clearly stated or implied in the regulations, other than in general terms in section 15(2).

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<sup>47</sup> also discussed in part 2.1.1

The anti-competitive cost of this restriction will depend on how the Board exercises its power and the type of names not approved by the Board.

The Review Panel considers that there will be adequate protection under the advertising restrictions discussed in part 2.4, and it is not necessary for public protection to obtain the prior approval of the Board.

**Recommendations:**

22. The requirement for the Board to approve business names, regulation 19, should be removed.

## 2.4 Disciplinary Actions

The Board is empowered by the Act, under section 41, to discipline chiropractors if, after conducting an inquiry, the Board is satisfied that there is proper cause for disciplinary action against that person. Such inquiry may be initiated by the Board on its own initiative or upon receipt of a complaint. However, the Board may refuse to inquire into a complaint if it considers it to be frivolous or vexatious.

Upon the Board finding a proper cause for disciplinary action against a chiropractor, it may reprimand the chiropractor, impose a division 5 fine (not exceeding \$8,000), or may suspend, cancel or impose conditions in relation to the chiropractor's registration<sup>48</sup>.

Therefore, Board's powers to discipline are potentially restrictions upon the conduct of chiropractors.

Sub-section 41(7) provides that there is proper cause for disciplinary action against a registered chiropractor if:

- (a) the registration was obtained improperly;
- (b) the chiropractor has been convicted, or is guilty, of an offence against this Act, an offence involving dishonesty or an offence punishable by imprisonment for one year or more;
- (c) the chiropractor is guilty of unprofessional conduct.

Central to the restrictions, therefore, is the Board's interpretation of "unprofessional conduct". There is no definition of "unprofessional conduct" in the Act, unlike other Acts such as the *Dentists Act 1984*. However, the Board uses the following as a guide<sup>49</sup>:

"Unprofessional conduct is not necessarily limited to conduct which is 'disgraceful or dishonourable', in the ordinary sense of those terms. It includes conduct which may reasonably be held to violate, or to fall short of, to a

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<sup>48</sup> section 41(4)

<sup>49</sup> Chiropractors Board of South Australia *Guidelines on Advertising & Professional Conduct* (August 1998)

substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency.”<sup>50</sup>

Restrictions upon conduct, and hence upon competition, arising from the disciplinary structure of the Act, will only give rise to unjustifiable anti-competitive costs if inappropriate standards of “unprofessional conduct” are applied. The criteria used by the Board are standards expected by the profession. The public’s expectations should also be considered. It may be possible that the standard required by the profession is different than that required by the public<sup>51</sup>. For example, the public may require a lower standard of service at a lower cost; the profession may require advertising restrictions which may preserve the profession rather than protect the public. However, the Review Panel has not seen any evidence that the Board has applied inappropriate, or too high, standards of unprofessional conduct<sup>52</sup>. Therefore the restriction is trivial.

In any case, the standard applied by the Board should be transparent. The consistency of the standard throughout the health professions may also assist the public’s understanding of the standard required. The Review Panel therefore believes that a definition, similar to that in other legislation regulating the health professions, should be contained in the Act. The submissions which addressed this issue concur.

The Board has prepared *Guidelines on Advertising and Professional Conduct* (August 1998) (“the Guidelines”). These Guidelines are not provided for in the Act and are not enforceable in themselves. Therefore, they are not within the terms of reference of this review. However the Guidelines are used by the Board as “a guide to the profession for the principles that will be used in future decisions relating to complaints of unprofessional conduct”<sup>53</sup>. As such, the Guidelines are relevant to the review, in particular when determining the scope of the Board’s powers in relation to unprofessional conduct.

The Guidelines are important in the context of public protection, in that they make the Board’s interpretation of “unprofessional conduct” more transparent to both the public and the profession. This is particularly important in the environment of information asymmetry and where each profession may have a different standard of conduct. It is important for the Guidelines to be readily available to the public and the profession.

The Review Panel believes that to increase the transparency of the Board’s interpretation of “unprofessional conduct”, these Guidelines should be enforceable. However, this increases the risk of the Board making restrictive decisions. One

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<sup>50</sup> at page 1 - from judgement of Bray CJ, 9 September 1975

<sup>51</sup> see also discussion on “fit and proper” in part 2.2.1

<sup>52</sup> in the 1996-1997 financial year the Board only found cause for disciplinary action against one chiropractor, who was reprimand, fined \$250 and ordered to pay costs of \$500.

<sup>53</sup> Guidelines, page 1



solution would be for the Guidelines to be contained in the Regulations, hence requiring the Governor's approval. However, this makes them difficult to change as chiropractic practice evolves over time.

The approval of an independent party is important and therefore the Review Panel concludes that any such Guidelines should be approved by the Minister, with the Board having power to make recommendations in relation thereto. The Guidelines should be referred to as a "Code of Conduct" to reflect the public protection issues.

### **Recommendations:**

23. The definition of "unprofessional conduct" should be inserted into the Act, and should read - "unprofessional conduct' includes:
  - (a) improper or unethical conduct in relation to the practice of chiropractic;
  - and
  - (b) incompetence or negligence in relation to the practice of chiropractic;
  - and
  - (c) conduct in contravention of a Code of Conduct approved by the Minister from time to time."
24. The functions of the Board should include to make recommendations to the Minister in relation to a Code of Conduct.
25. The approved Code of Conduct should be published in the *South Australian Government Gazette* and a copy thereof provided to all registered chiropractors.

### **Advertising**

The current Guidelines contain provisions purporting to restrict advertising. For example, they prohibit false, misleading or deceptive advertisements<sup>54</sup>. The cost of any advertising restriction is generally to potentially reduce the information available to consumers. This type of restriction is clearly in the public benefit and, arguably, within the meaning of "unprofessional conduct". The Review Panel concludes that this type of advertising restriction is justified.

Another type of advertising prohibited by the Guidelines is that which brings the profession into disrepute<sup>55</sup>. This means an advertisement which is disparaging of any other professional or profession, or contains material of a rude, offensive or undignified nature. This type of restriction is not justifiable on public benefit grounds, as any benefit is conferred on the profession only and as such does not outweigh the cost.

The alternatives to the Act restricting advertising is the reliance on the *Trade Practices Act* and the *Fair Trading Act*, which prohibit misleading and deceptive conduct. However, the Panel believes that there is benefit to the public in having a

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<sup>54</sup> section 2.1(a)(i)

<sup>55</sup> section 2.1(b)

body with specific knowledge of the profession be responsible for this matter. Further, the Board is more accessible to the public and can act more quickly.

The Panel therefore considers that “misleading and deceptive advertising” should be prohibited. However, this prohibition should be contained in the Act so that unregistered persons who advertise chiropractic services are covered to the same extent as registered persons.

**Recommendations:**

26. The misleading and deceptive advertising of chiropractic services should be an offence.

## 2.5 Actions of the Chiropractors Board

The Act continues the existence of the Chiropractors Board of South Australia<sup>56</sup>.

The Board is responsible for the registration of chiropractors, administration of the Act and discipline under the Act. As an administrative and disciplinary body, it is possible for the Board to create and impose restrictions upon competition in the chiropractic profession.

The membership and proceedings of the Board, legislative restraints upon the use of powers, including appeals processes, and the functions of the Board are relevant, therefore to the extent to which it could restrict competition through the exercise of its functions.

### 2.5.1 Functions of the Board

Section 15 lists the functions of the Board. These functions include:

- (a) the registration and professional discipline of chiropractors;
- (b) exercising a general oversight over the standards of chiropractic practice;
- (c) monitoring the standard of courses of instruction and training available to:-
  - (i) those seeking registration as chiropractors; and
  - (ii) registered chiropractors seeking to maintain and improve their skills in the practice of chiropractic,
 and consulting with educational authorities in relation to the establishment, maintenance and improvement of such courses; and
- (d) exercising the other functions assigned to it by or under this Act.

These functions, together with the provisions discussed above, have the potential to enable the Board to restrict entry into and participation within the chiropractic profession.

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<sup>56</sup> section 5

However the scope for the Board to use its powers to restrict competition is minimised by sub-section 15(2), which directs that the “Board must exercise its functions with a view to achieving and maintaining professional standards of competence and conduct in the practice of chiropractic”. The legislative safeguards discussed below also limit this possible outcome.

The Review Panel believes, consistently with most submissions, that to enhance these safeguards, the Board’s function to protect the public should be emphasised by specifically stating as such in the Act.

### **Recommendations**

27. Sub-section 15(2) should state that the “Board must exercise its functions to with a view to *protecting the public* by achieving and maintaining *appropriate* professional standards .....

### **Mental or physical unfitness**

Part of the Board’s functions under the Act are to deal with the possible mental or physical unfitness of a registered person.

Section 41 also empowers the Board to make inquiries into allegations (either on complaint or on its own initiative) that a registered person is mentally or physically unfit to practise chiropractic. If the Board is then satisfied that the person is mentally or physically unfit to practise chiropractic at all or on an unrestricted basis, it may impose conditions on, suspend or cancel that person’s registration.

The ability to impose conditions on, suspend or cancel registration is a restriction on a person’s ability to practise chiropractic. This is a trivial restriction on competition on the market as a whole.

There is obvious public benefit in a body being able to restrict the practice of persons who are not fit to practise chiropractic. This is an extension of the “fit and proper person” standard required upon entry to the market. As with that requirement, the Board must consider the registered person’s competence and capacity. Without the power to maintain a continuing standard of competence, the public benefit of the “fit and proper person” standard is reduced.

As long as the Board uses objective standards of fitness, the anti-competitive cost is minimal. The legislative safeguards discussed in part 2.5.2 also help to minimise any potential anti-competitive cost.

There are no alternatives to this restriction which adequately protect the public. The Chiropractors Board of SA, in its submission<sup>57</sup>, recommended that this restriction be extended to include a provision such as that in the *Medical Practitioners Act 1983(SA)*, section 51 which provides:

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<sup>57</sup> at page 25

“Where on the application of:

- (a) the Registrar;
- (b) the Minister;
- (c) the SA Branch of the Australian Medical Association Inc; or
- (d) a medical practitioner

the Board is satisfied that the ability of a medical practitioner to practise medicine is impaired by mental or physical incapacity to such an extent that it is desirable, in the public interest, that an order be made under this section, the Board may, by order, do one or both of the following:

- (e) suspend his registration until he has recovered from his incapacity or for such lesser period as the Board determines; or
- (f) impose conditions restricting his right to practise medicine.”

The Board provided an example to the Panel of a chiropractor who was alleged to have attempted to assault a client and chase her down the street, due to a mental illness. This matter could not be dealt with by the Board for some five months (when the chiropractor’s registration was cancelled), thereby posing a threat to other clients of the chiropractor. Another example is in the case of drug or alcohol abuse.

The Review Panel agrees with the recommendation of the Board. The restriction introduced would be trivial. Appeal processed would clearly apply to this decision, but it would be necessary for the matter to be brought before the Board for hearing as expeditiously as possible.

#### **Recommendations:**

- 28. There should be a provision for the immediate suspension of a chiropractor who is impaired by mental or physical incapacity such as to pose a risk to the safety of consumers, such as section 51 of the *Medical Practitioners Act 1983*.
- 29. The Board should be required to hear the registered person on the continuation of such an order as soon as practicable.

## **2.5.2 Legislative safeguards**

### **Constitution and Proceedings**

Provisions regulating the constitution and proceedings of the Board are legislative safeguards upon the use of the powers of the Board to restrict competition. The constitution of the Board is set out in section 6 of the Act. The constitution of the Board is relevant to the review, as a Board with balanced chiropractor / non-chiropractor membership is perhaps less likely to be able to achieve anti-competitive market design outcomes through the use of powers ascribed to the Board. The Board has four members who are

chiropractors, one medical practitioner, one legal practitioner and one representative of persons receiving chiropractic services. In light of the Panel's recommendations for the separation of chiropractors and osteopaths, the Panel believes that there should be a representative from both groups on the Board. Of course if no osteopath (or indeed chiropractors) nominates, then the member should be a chiropractor (or osteopath).

### **Recommendations**

30. There should be at least one chiropractor member and one osteopath member of the Board. If no person nominates from either group, then the member should be a member of the other group.

Provisions regulating the terms and conditions of office of Board members (section 7), the disclosure of interests of members (section 9) and the proceedings of the Board (section 10) are additional legislative safeguards upon the use of the powers of the Board to restrict competition.

Section 42 provides further legislative safeguards against the Board using its powers to restrict competition by providing for natural justice to be afforded to a person in relation to whom an inquiry is to be held.

### **Appeals mechanism**

Section 46 of the Act enables appeals to the Supreme Court against any decisions or orders of the Board in the exercise or purported exercise of its powers or functions under this Act.

The powers of the Supreme Court in relation to an appeal from a decision of the Board or the Tribunal are set out in section 46(3). These powers are to:

- (a) affirm, vary or quash the decision, reprimand or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter as the case requires.

The Review Panel acknowledges that an appeal to the Supreme Court may be a costly and time consuming exercise, therefore inaccessible to some prospective appellants and hence limiting the protection provided. The only alternative within the current system is an appeal to the District Court, Administrative and Disciplinary Division, whereby some cost and time benefit could be achieved.

Most other States have combined health tribunals with varying functions, such as the New South Wales Health Care Complaints Commission. However in most cases, that system operates in parallel to the specific disciplinary body and there is no appeal from the disciplinary body to the combined Tribunal.

Such a system does, however, assist in providing greater transparency of decisions and accessibility to the consumer.

In these circumstances, the Review Panel considers the current appeals mechanism to provide adequate protection, subject to the appeals body being the District Court rather than the Supreme Court.

**Recommendations:**

31. References to the Supreme Court in the Act should be amended to “the Administrative and Disciplinary Division of the District Court”.

**Other Safeguards**

As discussed above, the Board exercises discretionary functions in a number of situations, such as deciding on whether a person is “fit and proper” to be registered or a person is “medically or physically unfit” or is guilty of “unprofessional conduct”.

In relation to unprofessional conduct decisions, the Board has prepared Guidelines, as discussed above, to explain its decision-making procedure<sup>58</sup>. The Review Panel believes that a similar set of guidelines in relation to all discretionary decisions would assist in promoting objective criteria and hence transparency of the Board’s decisions. This should not be a legislative requirement at this stage.

**Recommendations:**

32. The Board should publish and make available to the public and the profession guidelines on:
- (a) Registration criteria;
  - (b) Reregistration criteria;
  - (c) Approving training courses;
  - (d) Criteria for mental or physical unfitness.

The Review Panel considers that the above legislative safeguards, subject to the recommendations, are sufficient to protect the public. The submissions received support this conclusion.

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<sup>58</sup> The Panel notes that the Board also has “Guidelines on Registration” but argues that these should be more detailed, as they do not currently contain decision making criteria.

## PART 3: ADMINISTRATIVE REQUIREMENTS

The Review Panel was required during the course of this review to examine the provisions of the Act which impose administrative obligations upon persons and determine whether these obligations are unnecessary or impose an unwarranted burden. The provisions of the Act which impose administrative requirements are:

- Section 16** The Board must keep proper accounts of its financial affairs and prepare a statement of accounts which must be audited each financial year.
- Section 17** The Board must prepare and deliver to the Minister, on or before 30 September, an annual report detailing the administration of the Act and containing statistics in relation to complaints received and orders and decisions made by the Board.
- Section 19** The requirement that an application for registration be made in the prescribed manner and form. The forms are set out in Schedules 2 and 3 to the regulations. An applicant must, if the Board so requires, furnish the Board with such information, papers or documents as it specifies and verify any information by statutory declaration.
- Section 22** The requirement that an application for renewal of registration be made in the prescribed manner and form. The form is set out in Schedule 4 to the regulations.
- Section 23** The Registrar must keep a register of chiropractors which must be kept up to date and be available for inspection.
- Section 24** The Registrar must provide any certificate in relation to registration upon request and payment of the prescribed fee.
- Section 30** Where a chiropractor has been ordered by a court to pay compensation or has agreed to pay a sum of money in relation to a negligence claim, that person must provide the Board with information in relation to the claim. The information is prescribed in regulation 16.
- Section 32** The requirement to obtain the Board's approval to alter a company's memorandum or articles of association.
- Section 36** A registered company must lodge with the Board in July of each year a return in the form approved by the Board containing the information required by the Board.
- Section 39** Medical practitioners are required to report to the Board an illness of a chiropractor which has resulted in or is likely to result in mental or physical incapacity stating the reasons for his or her opinion, the views of any other medical practitioner and other prescribed information, which is set out in regulation 17.
- Regulation 4** The Registrar must give notice to each registered chiropractor where a vacancy occurs in the office of an elected member of the Board.
- Regulation 5** A nomination of a candidate for election must be in a form approved by the Registrar.

**Regulation 8** Where a postal vote is to be conducted, the Registrar must provide each registered chiropractor with a voting paper, an envelope and a copy of the Board's how-to-vote instructions.

**Regulation 9** A vote must be in accordance with the Board's how-to-vote instructions.

There were no submissions received which argued that any of the above administrative requirements imposed an unwarranted burden on any person.

The Review Panel notes that the removal of ownership restrictions will include the removal of sections 32 and 36 and therefore does not need to consider these sections.

Sections 16 and 17 are common provisions and are necessary to ensure accountability of the Board. The burden on the Board is not significant, as it is general business practice to keep accounts of financial affairs.

Sections 19, and 22 are necessary for the Board to administer the Act, maintain accurate records of registered persons and to ensure competence. The burden on the registered person to provide this information is minimal.

Section 23 and 24 are necessary to achieve the objectives of the Act. It is important for this information to be available to the public and profession. There is minimal burden on the Board.

Section 30 is necessary to assist the Board to investigate possible unprofessional conduct. The burden on the registered person is insignificant as this information should be readily available.

Section 39 is common to the health professions and is necessary to enable the Board to enforce section 41, where a registered person may be mentally or physically unfit to practise chiropractic. The burden on the medical practitioner is to forward the required information, which is not significant.

Regulations 4, 5, 8 and 9 are necessary to ensure a fair election procedure. The burden is on the Board and is not unwarranted.

Accordingly, in relation to these provisions, the Review Panel concludes that that there are no administrative procedures under the Act and regulations which are unnecessary or impose an unwarranted burden on any person.



## PART 4: CONCLUSION

### 4.1 Conclusions

#### **Restrictions**

The provisions relating to registration, reservation of practice and title, disciplinary actions and ownership restrictions in the *Chiropractors Act* establish and maintain the system of practice protection. This system contains significant restrictions on entry to the chiropractic profession and conduct within the profession. The most significant are the specific provisions relating to the practice protection regime which restrict entry to the chiropractic profession to appropriately qualified persons. This is a serious restriction. There are also restrictions upon the conduct of registered persons in the practice of chiropractic, such as the restrictions on unprofessional conduct. There are also restrictions on the conduct of chiropractic as a business, such as the ownership and advertising restrictions.

#### **Public Benefits**

The system of practice protection established by the *Chiropractors Act* achieves significant public benefit. The public benefit conferred by the Act is the protection of the public from potential harm by incompetent chiropractors. It provides the public with confidence that registered chiropractors have appropriate qualifications and with information about a particular chiropractors qualifications, expertise, and the results of any Board decisions against that person.

#### **Costs**

The two categories of cost, as referred to in part 1.4, arise in the case of the restrictions contained in the *Chiropractors Act*. The Review Panel did not receive any evidence that restricting the numbers of chiropractors causes a shortage of appropriately trained persons. However, the restrictions do cause the cost of such services to be higher than in an unrestricted system.

Compliance costs under the *Chiropractors Act* are generally minimal, because they are such a small percentage of the total expenditure of a chiropractic practice. However compliance costs of obtaining the necessary qualifications are more significant.

Subject to the recommendations listed below, the Review Panel assesses that the public benefit of the restrictions contained in the *Chiropractors Act* outweighs the costs of the restrictions.

#### **Alternatives**

The objectives of these restrictions is, in summary, to protect the public. The Review Panel has considered the alternatives to the legislative restrictions on competition to achieve these objectives.

Such alternatives are:

1. Consumer protection legislation such as the *Trade Practices Act* and the *Fair Trading Act*;
2. Protection under the common law, such as claims in negligence, breach of contract and misrepresentation;
3. Public health legislation, such as the *Public and Environmental Health Act 1987* and the *Radiation Protection and Control Act 1982*;
4. Self - regulation;
5. Corporations Law.

The Review Panel have concluded that these alternatives are not sufficient to protect the public and that therefore the objectives of the Act cannot be achieved, at this time, by means other than legislative restrictions on the chiropractic profession.

## 4.2 Recommendations

On the basis of the analysis set out in this report the Review Panel recommends:

### ***Legislative Changes***

1. The objects section of the Act should be amended to read “An Act to protect the public by providing for the registration of chiropractors.....”.
2. The name of the Act should be changed to the “Chiropractors and Osteopaths Act”.
3. The definition of “chiropractic” be deleted and replaced by a definition of “chiropractor” as “a person registered as a chiropractor under this Act” and a definition of “osteopath” as “ a person registered as an osteopath under this Act”.
5. There should be two separate registers for chiropractors and osteopaths, with provision to be registered on both. Qualifications and experience should be approved in the two separate categories.
6. References in the Act to “chiropractor” should be changed to “chiropractor or osteopath”.
8. Section 25(1) should be amended by deleting “a person must not practise chiropractic” and replacing it with “a person must not manipulate or adjust for therapeutic purposes the spinal column or joints of the human body”.
9. The exemption for medical practitioners and physiotherapists from the operation of ss25(1) should remain
10. Use of the words “spinal manipulation” and “spinal adjustment” should be reserved to registered persons and therefore should be prescribed words under section 27.
11. Section 28(2) should be amended to permit the Board to require a chiropractor to pass an examination approved by the Board.

12. The requirement in section 18(1)(a) that a person be of or above the age of 18 years should be removed.
13. A registered person should be required to satisfy the Board that they are (still) a “fit and proper” person in order for that person’s registration to be renewed.
14. The requirement for 12 months full-time postgraduate clinical experience, regulation 11(b), should be removed.
15. The requirement for “prescribed qualifications and experience” in section 18(c) should be amended to “qualifications and experienced approved by the Board”.
16. The Board should publish and make available to the public and registered persons a list of approved qualifications in the *South Australian Government Gazette*.
17. There should be an appeal from decisions of the Board to approve or to refuse to approve certain qualifications and experience.
18. The forms contained in Schedules 2 and 3 to the Regulations should be amended to include an authority for the Board to obtain information about criminal convictions from police authorities.
19. All ownership restrictions, direct and indirect, contained in the Act should be removed.
20. It should be an offence for an employer to unduly influence an employee to perform chiropractic in a manner detrimental to the welfare of the consumer.
21. Registered persons should be required to provide the Board with the address of all premises in which they practise and the name and address of their employer, upon registering and re-registering.
22. The requirement for the Board to approve business names, regulation 19, should be removed.
23. The definition of “unprofessional conduct” should be inserted into the Act, and should read - “unprofessional conduct’ includes:
  - (a) improper or unethical conduct in relation to the practice of chiropractic;
  - and
  - (b) incompetence or negligence in relation to the practice of chiropractic;
  - and
  - (c) conduct in contravention of a Code of Conduct approved by the Minister from time to time.”
24. The functions of the Board should include to make recommendations to the Minister in relation to a Code of Conduct.
25. The approved Code of Conduct should be published in the *South Australian Government Gazette* and a copy thereof provided to all registered chiropractors.
26. The misleading and deceptive advertising of chiropractic services should be an offence.
27. Sub-section 15(2) should state that the “Board must exercise its functions to with a view to *protecting the public* by achieving and maintaining *appropriate professional standards* .....
28. There should be a provision for the immediate suspension of a chiropractor who is impaired by mental or physical incapacity such as to pose a risk to the safety of consumers, such as section 51 of the *Medical Practitioners Act 1983*.
29. The Board should be required to hear the registered person on the continuation of such an order as soon as practicable.

30. There should be at least one chiropractor member and one osteopath member of the Board. If no person nominates from either group, then the member should be a member of the other group.
31. References to the Supreme Court in the Act should be amended to “the Administrative and Disciplinary Division of the District Court”.
32. The Board should publish and make available to the public and the profession guidelines on:
  - (a) Registration criteria;
  - (b) Reregistration criteria;
  - (c) Approving training courses;
  - (d) Criteria for mental or physical unfitness.

### ***Procedural Changes***

4. Sub-section 4(3) should be retained.
7. The issue of introducing separate legislation to regulate osteopathy should be considered when the numbers of osteopaths registered in South Australia increase to such a number as to make separate legislation financially viable and such that the separate administration will be self-supporting.

## PART 5: APPENDICES

### APPENDIX 1

#### TERMS OF REFERENCE

##### SUMMARY

Under the Competition Principles Agreement, in relation to legislation that contain restrictions upon competition, the Government of South Australia is required to show evidence that:

- (a) the benefits of any restriction to the community outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition

The *Chiropractors Act 1991* will be examined during the legislative review in accordance with the obligations contained in Clause 5 of the Agreement. Regulations enacted under the *Chiropractors Act 1991* will be examined concurrently.

##### REVIEW PANEL

Marguerite Tohl: Department of Human Services (Chair)  
 Peter Martin: Registrar, Chiropractors Board of South Australia  
 Jane Richards: Solicitor, Competition Policy Review Team

##### OBJECTIVES OF THE REVIEW

When considering the appropriate form of regulation the Review Panel will attempt to achieve the following objectives:

1. Regulation should only be retained where the benefits to the community as a whole outweigh the costs: and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
2. Pursuant to Clause 1 (3) of the Agreement, in assessing the benefits of the regulation regard shall be had, where relevant, to:
  - effects on the environment
  - social welfare and equity
  - occupational health and safety
  - economic & regional development
  - consumer interests, the competitiveness of business including small business
  - efficient resource allocation
3. Compliance costs and the administrative burden on small business should be reduced where feasible.

## ISSUES TO BE ADDRESSED

1. Clarify the objectives of the *Chiropractors Act 1991*, including the identification of the public benefit of the Act, and provide assessment of the importance of these objectives to the community.
2. Identify restrictions to competition contained in the Act, regulations made under the Act, and any relevant Codes of Practice:
  - 2.1 describe the theoretical nature of each restriction (eg: barrier to entry, restriction to competitive conduct within the market, discrimination between market participants)
  - 2.2 identify the markets upon which each restriction impacts
  - 2.3 provide initial categorisation of each restriction (ie: trivial, intermediate or serious)
3. Analyse and describe the likely effects of these restrictions on competition in the relevant markets and on the economy generally:
  - 3.1 what are the practical effects of each restriction on the market?
  - 3.2 assign weighting to the effect of each restriction in the market
  - 3.3 assess what is the relative importance of each restriction in a particular market to the economy as a whole
4. Assess and balance the costs and the benefits of the restriction.
5. Where the restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means for achieving the objectives of the *Chiropractors Act 1991*, including non-legislative approaches.
6. Consider whether any licensing, reporting or other administrative procedures are unnecessary or impose a burden on any person.

## CONSULTATION

The Review Panel will review submissions received in the consultation process undertaken within the prescribed period. A list of Key Interest Groups will be compiled and provided with a copy of the Draft Review Panel Report for comment.

## REPORT

The Report to the Minister will contain:

- Terms of Reference of the review
- Persons and groups consulted
- Analysis and recommendations

## APPENDIX 2

### REPORTED RISKS OF JOINT MANIPULATION<sup>59</sup>

STUDY	COMPLICATION	RISK ESTIMATE
Assendelft, Bouter, Knipschild (1996)	Vertebrobasilar accident Cauda Equina Syndrome	from 1/20,000pts to 1/1 mill cervical manipulations 1/1mill treatments
Dvorak, Orelli (1985)	Major complication 'Slight' neurological complication	1/400,000 manipulations 1/40,000 cases
Haynes (1994)	'Stroke'	<5/100,000 patients receiving neck manipulation
Michaeli (1993)	Vertebrobasilar accident	1/228,050 manipulations
Gutman (1983)	Vertebrobasilar accident	2-3/1mill cervical manipulations
Henderson, Cassidy (1988)	Vertebrobasilar accident	1/1 mill manipulations
Shekelle et al (1992)	Cauda Equina Syndrome	1/100 mill manipulations

#### References:

1. Assendelft W J J, Shekelle PG, Koes BW, Spinal manipulation for low back pain (protocol) Cochrane Library 1996 - Issue 3.
2. Shekelle P G, Adams AH, Chassin R, Hurwitz E L Brooks R H, Spinal Manipulation for low back pain. *Ann Intern Med* 1992; 117: 590-8.
3. Laderman J P, Accidents of spinal manipulation. *Ann Swiss Chiropractors Assoc* 1981; 7: 161 - 208.
4. Winer C, Catastrophes following forceful cervical manipulation, a review of the literature, *AAMM Bulletin* 1987 Mar

<sup>59</sup> Reproduced from New South Wales Health Department *Review of the Chiropractors and Osteopaths Act 1991, Issues Paper* (June 1998), Appendix C

5. Assendelft W J J, Bouter S M ,Knipschild P G, Complications of spinal manipulation: a comprehensive review of the literature, J Am Prac 1996 42(5):475-80.
6. Dvorak J, Orelli F, How dangerous is manipulation of the cervical spine? Case reports and results of survey, Manual Medicine 1985; 2: 1-4.
7. Haynes M J , Stroke following cervical manipulation in Perth. Chiropractic J of Aus 1994; 24: 42-6
8. Michaeli A , Reported occurrence and nature of complications following manipulative physiotherapy in South Africa. Aust Physiotherapy 1993; 39: 309-15
9. Gutmann g, Verterzungn der Arteria vertebralis durch manuelle therpaie. Manuelle Medizin 1983; 21: 2-14
10. Henderson D J, Cassidy J D, Vertebral artery syndrome, Part A: vertebrobasilar accidents associated with cervical manipulation. Invernon H (Ed) Upper cervical syndrome: chiropractic diagnosis and treatment, Baltimore Md: Williams & Wilkins, 1988: 194-206.
11. Powell F C, Hanigan W C, Olivero W C, A risk/benefit analysis of spinal manipulation therapy for the relief of lumbar or cervical pain, Neurosurgery 1993; 33: 73-79.



**APPENDIX 3****SCHEDULE OF REGISTRATION FEES<sup>60</sup> - SOUTH AUSTRALIA**

1. Application for Registration fee (first \$110 is non refundable)
  - (a) Natural persons granted registration
    - (i) between December & June in the next year  
\$390
    - (ii) between July & November  
\$225
    - (iii) but for persons in their first year of practice immediately following graduation:
      - between December & June in the next year  
\$225
      - between July & November  
\$110
    - (iv) in a limited capacity for a period not exceeding one month  
\$100
  - (b) Companies granted registration
    - (i) between January & June  
\$410
    - (ii) between July & December  
\$255
2. Application for Renewal of Registration fee
  - (a) Natural Persons
    - (i) persons under 70 years of age  
\$360
    - (ii) persons 70 years of age and over  
\$100
  - (b) Companies  
\$360

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<sup>60</sup> from Chiropractors Board of South Australia *Schedule of Registration & Administrative Fees*

## APPENDIX 4

**COMPARISON OF REGISTRATION FEES AND NUMBER OF  
REGISTRANTS  
CHIROPRACTORS - NATURAL PERSONS**

<b>Jurisdiction</b>	<b>Application for Registration fee</b>	<b>Annual Registration fee</b>	<b>Total of registered chiropractors &amp; osteopaths</b>
South Australia	\$390 <sup>61</sup>	\$360	250
New South Wales	\$145	\$124	1145
Victoria	\$350	\$300	695
Tasmania	\$125	\$275	50
Queensland	\$362.50	\$212.50	530
ACT	\$320	\$260	72
Northern Territory	\$300	\$150	32
Western Australia	\$100	\$350	240
New Zealand	\$550	\$750	185

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<sup>61</sup> includes annual registration fee for first year

## APPENDIX 5

### MATERIAL CONSIDERED BY REVIEW PANEL

- Australian Council of Professions *National Competition Policy and the Professions* (1997)
- Australian Health Minister's Advisory Council *Final Report of the Working Group Advising on Regulatory Requirements for Unregistered Health Occupations* (20 February 1997)
- Chiropractors Board of South Australia *Annual Report 1997*
- Chiropractors Board of South Australia *Guidelines on Advertising & Professional Conduct* (August 1998)
- Chiropractors Board of South Australia *Guidelines on Registration* (October 1993)
- Hansard *Second Reading - Chiropractors Bill* (21 February 1991)
- Health Department of Western Australia *Discussion Paper - Review of Western Australian Health Practitioner Legislation* (October 1998)
- Scott Haldemann *Principles and Practice of Chiropractic* (2nd Ed)
- National Competition Council *Considering the Public Interest under the National Competition Policy* (November 1996)
- New South Wales Health Department *Review of the Chiropractors and Osteopaths Act 1991, Issues Paper* (June 1998)
- Pew Health Professions Commission, report for the Taskforce on Health Care Workforce Regulation *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (US, December 1995)
- Queensland Health *Review of Medical and Health Practitioner Registration Acts* (September 1996)
- Victorian Department of Human Services *Review of Dentists Act 1972 and Dental Technicians Act 1972, Final Report*, (July 1998)
- Job Guide Online <http://jobguide.deet.gov.au/JobGuideOnline/Text/Jobs/>
- *Sobey v Commercial and Private Agents Board* (1979) 22 SASR 70
- *Wright v Teachers Registration Board of South Australia* (1983) 111 LSJS 177
- *Chiropractors Registration Act 1996 Vic*
- *Osteopaths Registration Act 1996 (Vic)*
- *Chiropractors & Osteopaths Act 1991 (NSW)*
- *Chiropractors & Osteopaths Act 1979 (Qld)*
- *Chiropractors & Osteopaths Registration Act 1997 (Tas)*
- *Chiropractors Act 1964 (WA)*
- *Osteopaths Act 1997 (WA)*
- *Chiropractors & Osteopaths Act 1983 (ACT)*
- *Health Practitioners & Allied Professionals Registration Act (NT)*

## **SUBMISSIONS**

- Australian Osteopaths Association (undated)
- Australian Osteopaths Association (11 February 1999)
- Australian Physiotherapy Association (South Australian Branch) (4 December 1998)
- Australian Physiotherapy Association (South Australian Branch) (15 February 1999)
- Chiropractors' Association of Australia (South Australia) Ltd (10 December 1998)
- Chiropractors Board of South Australia (3 December 1998)
- Chiropractors Board of South Australia (11 February 1999)

**APPENDIX 6****CONSULTATION LIST**

Amputee Association of South  
Australia  
PO Box 3015  
UNLEY SA 5061

Arthritis Foundation of South Australia  
1/202-208 Glen Osmond Road  
FULLARTON SA 5063

Australian Osteopathic Association,  
Federal Office  
PO Box 699  
TURRAMURRA NSW 2074

Australian Osteopathic Association,  
SA Representative  
25 Rose Street  
MILE END SA 5031

CARA Inc  
PO Box 237  
WOODVILLE SA 5011

Chiropractors Association of Australia  
(SA Branch)  
PO Box 2407  
ADELAIDE SA 5000

Chiropractors Board of South Australia  
16 Norma Street  
MILE END SA 5031

Chiropractic Education Australia Ltd  
5 Station Street  
KATOOMBA NSW 2780

Council on the Ageing  
GPO Box 1583  
ADELAIDE SA 5001

Council of Pensioners & Retired  
Persons SA Inc  
45 Flinders Street  
ADELAIDE SA 5000

Disability Action Inc  
62 Henley Beach Road  
MILE END SA 5031

Disability Services Office  
Department of Human Services  
11 Hindmarsh Square  
ADELAIDE SA 5000

Migrant Health Service  
21 Market Street  
ADELAIDE SA 5000

Physical Disability Council of Australia  
(SA Branch)  
178 Henley Beach Road  
TORRENSVILLE SA 5031

Wheelchair Sport SA  
PO Box 144  
GREENACRES SA 5086

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