

The Reform of Occupational Regulation in Australia

This paper was prepared by Messrs David Parker, Blair Comley and Vishal Beri, Structural Policy Division, Treasury and presented by Mr David Parker, Assistant Secretary, Competition Policy Branch, to an Asia-Pacific Economic Cooperation (APEC) Workshop on Competition Policy and Deregulation held in Quebec, Canada in May 1997. It considers the role and design of occupational regulation based upon a set of 'best practice' principles. Regulation is an important part of the legal and institutional fabric of a country. However, governments have become increasingly concerned that inappropriate regulation may lead to adverse growth, efficiency and distributional outcomes. This paper considers possible rationales for occupational regulation and addresses the general question: 'what are the precise objectives of regulation, and how can we design regulations to best achieve these objectives, without producing unintended consequences?'. The paper considers some Australian initiatives in regulatory reform being progressed as part of the National Competition Policy reforms. Finally, the paper concludes with a set of principles to guide the design of quality regulations.

INTRODUCTION

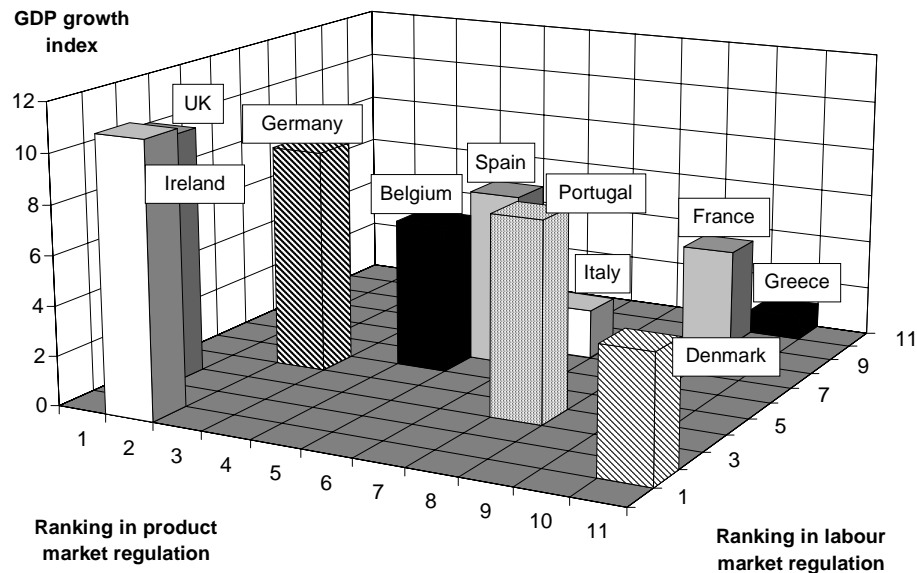
The development of an economy and the regulatory framework in which it operates are interrelated and complementary. Regulation can substantially influence the structure of particular industries and either foster or retard economic development of particular sectors or of the economy generally. Good quality regulation can promote economic growth while not ignoring important social goals.

In recent times there has been an increased awareness of the pitfalls of regulatory capture and a recognition that some legal and institutional arrangements have not evolved to accommodate a changing environment. This has taken place in the context of a growing consensus about the appropriate role of regulation and the adverse effect of poor regulation on economic performance and distributional outcomes. As a result, governments in a number of countries have undertaken reform processes to ensure that regulations are promoting current government priorities and serving to facilitate a competitive and dynamic economic environment.

The view that poor regulation can adversely affect economic performance is not controversial. Nevertheless, it is quite a difficult exercise to make robust quantitative assessments of these adverse consequences, particularly in terms of

dynamic costs if the ability of an economy to adapt flexibly to change is impaired. Making such estimates is not the purpose of this paper. It is sufficient to note for our purposes that the effect may be quite significant. An interesting paper by Koedijk and Kremens (1996) analysed the relationship between the degree of regulation (measured by qualitative ranking of product and labour market regulation) and growth rates in eleven European countries over the period 1981 to 1993. The conclusion of their paper (summarised in the following chart derived from their data) is that the more lightly regulated economies tended to experience higher growth rates.

Chart 1: Labour and Product Market Regulation versus GDP Growth, OECD, 1981-1993(a)



(a) Low ranking indicates low degree of regulation.
Source: Koedijk and Kremens 1996.

Occupational regulation, which is the focus of this paper, is only part of the overall picture in regulation. However, it is an important part, particularly as many professional services are intermediate inputs to other productive processes. The Industry Commission (IC) (1995) calculated estimates of the benefits of competition policy reforms across a number of sectors. The IC estimated that regulatory reform in a number of professions in Australia (dentists, legal profession, medical profession, optometrists, and pharmacists) would increase the level of Gross Domestic Product (GDP) by around one-third of one per cent. (These professions are, of course, not the entire extent of occupational regulation.)

Regulation is not the only thing that influences industry structure. Obviously, the underlying economics of an industry are very important. So too are other elements of the social fabric, which include cultural values and practices. These influences are quite diverse in the different countries in APEC. Regulations must function within the society in which they apply. What suits one country may not always suit or work in another. These differences need to be borne in mind when thinking about regulatory issues, including in the context of any efforts directed at convergence or mutual recognition.

As economies grow and become more complex there is often pressure for regulatory reform. Similarly, pressures for reform can arise as the intensity of trade with other economies grows. In lightly regulated economies, the traditional roles of culture and practice which govern economic relationships among groups can be put under strain as patterns of economic transactions increasingly shift and widen. In highly regulated economies, regulation can prove to be a barrier to the innovation which is necessary as markets increasingly integrate. Hence, we may see pressures for more regulation in some areas of some economies and pressures for less regulation in other areas of other economies.

Notwithstanding the diversities of different countries, there are some principles of good regulatory practice that are widely applicable and can assist the mutual economic progress to which APEC is directed. This paper is intended to analyse those principles in the context of occupational regulation.

One of the issues that needs to be addressed in reform of occupational regulation (irrespective of whether the direction of reform is for more or less regulation) is the appropriate level of regulation. Formal legal structures which codify, create and limit rights can be general to an economy or they can be specific to particular trade sectors. Occupational regulation is usually sector specific and typically has evolved as a way of codifying previous practices and custom where the pace of change or scope of transactions demands it. The appropriateness of general or specific regulation will depend upon the objective of the regulation and whether the 'problem' that is addressed is isolated or systemic.

The regulation applying to an occupation can be a quite complex issue because regulation of any occupation usually involves many layers and different institutional structures. Specifically, there is the general law, industry specific law and general custom and practice. There may be general or industry specific regulators and professional bodies may also undertake self-regulatory functions. There is also the issue of the interrelationship between these different layers and institutions.

The general trend in addressing these issues has been to find new ways to regulate occupations that avoid unjustified restrictions on competition and encourage best practice and innovation. The challenge is to do so in ways that promote important social goals.

THE RATIONALE FOR OCCUPATIONAL REGULATION

This section discusses some rationales for regulation and some desirable properties of regulation.

Law, custom and practice all set the environment in which market transactions take place. Regulation of market activity is necessary where additional sets of rights, or qualifications of rights, are required to assist the market to operate in a manner that is efficient and equitable for participants.

Promoting competition is often useful to encourage both an efficient and equitable operation of a particular market. Competition in the market provides a discipline that balances the interests of sellers and buyers. In so far as equity is concerned, this can be particularly important if one group may otherwise have the ability to capture all the benefits of economic activity through limiting competition. However, unfettered market activity, and unfettered competition, does not always promote the most desirable outcomes.

The regulation of occupations generally arises out of a recognition that there may be a set of circumstances where competition and unconstrained transactions do not produce optimal outcomes. Such constraints include barriers to entry (such as qualification requirements) or regulation of transactions themselves (such as price or other content controls). Three potentially legitimate rationales are often given for regulating individual market transactions in occupational services. These are: information limitations; non-voluntary transactions; and distributional concerns.

Information Limitations

A person who is purchasing goods or services needs to make an assessment of the quality of the goods or services. The consequences of making incorrect judgements (ie, the risk) for a relatively simple good with few characteristics is likely to be small as consumers are likely to be able to form a reasonably accurate estimate of the value of the good. The ability of consumers to form accurate judgements is highest when consumers can assess the quality of the goods after consumption and they undertake repeat purchases.

However, professional services are significantly more difficult for consumers to assess. Five key characteristics of professional services will tend to magnify the information asymmetry and its consequences. First, services are generally not observable before they are purchased as the consumer cannot inspect a service before purchase in the same direct way as can be done with most goods. Second, professional services are by their nature complex and often require considerable skill to deliver and tailor to the consumer's needs. Therefore, it can be difficult for the consumer to assess the quality of the service before it is purchased. Third, the quality of many professional services can be difficult to assess even *after* the service has been purchased. For example, if a person hires a lawyer to undertake litigation, which is ultimately unsuccessful, it can be difficult for the consumer to

know whether the legal services were poorly delivered or the case was inherently difficult to win. Fourth, many consumers are very infrequent consumers of professional services. Therefore, they do not have repeat purchases to assess quality. Fifth, the consequences of purchasing poor professional services can be significant. For example, the service may represent a large expenditure for the consumer and a defective service (eg a heart bypass operation) can cause serious and irreversible harm.

These characteristics can be used to justify regulation aimed at quality assurance. Such schemes are intended to provide a guaranteed level of service quality to consumers and therefore reduce risks associated with purchasing professional services. To some extent these schemes substitute search and information gathering by individuals with information gathering and assessment through some regulatory mechanism. These arrangements can reduce the transactions cost for consumers and help the market to function efficiently.

The focus here is on consumer protection, but that does not imply that all professional services should be regulated in the same way. Different services have different complexities and risks. And, in some markets, consumers may be able to form reasonably good assessments of quality and risk through word of mouth reputation or 'branding'.

Non-Voluntary Transactions

Non-voluntary exchange may not be mutually beneficial. Concern about coercion can be used to justify laws that invalidate contracts that are entered into under duress. Generally societies have laws, customs and practices that limit the ability of individuals to coerce others. In markets for professional services there may be a case for special protection because of greater opportunity for subtle coercion. For example, professionals may have significant opportunities to misrepresent the costs and benefits of taking a particular course of action. There may also be cases where relationships of trust between the professional and the client can be abused.

Distributional Considerations

Distributional considerations are often used to justify regulations which set the terms on which services are provided. These can include price caps which are intended to provide services at lower cost to low income earners.

There is a debate about whether such occupational regulation is appropriate. The key question in that context is whether distributional concerns should be addressed through direct regulation of occupations or whether there may be a better, more direct redistribution mechanism. That may depend on the stage of development of the economy, but generally it is worth noting the following points. First, attempting to redistribute through such regulatory mechanisms is often not transparent. That is, it can be difficult to know whether those who the

government intends to assist are actually assisted by the policy. Second, a regulatory approach to redistribution may not be well targeted. The nature of such indirect regulations is such that they cannot differentiate between income groups. Therefore, high income groups will also benefit from the regulations (funded from a cross-subsidy from other consumers). If so, the total redistributive benefit is less than the total cost imposed on other consumers. Third, a more efficient method may be to target the distributive issue directly through the tax/transfer system. Whilst this may well be the best theoretical solution, if the redistribution would otherwise not take place, the redistributive objectives of the government may have to be pursued through some, albeit imperfect, regulatory mechanism.

In summary, economists are generally sceptical about the desirability of using occupational regulation tools to achieve distributional objectives. Such regulations can lead to non-transparent outcomes, can benefit some recipients in unintended ways, and be less efficient than redistributing through the tax/transfer system.

Inappropriate Justifications

Regulations that have the intent of merely increasing returns to groups that are regulated are not generally considered appropriate given the arguments about distributional considerations noted above. Moreover, the redistribution to regulated groups is also likely to involve negative distributional consequences for relatively poor consumers.

It is not unusual that occupational regulation does indeed have that effect. For example, restrictions on entry to a profession can be expected to limit supply of the services of that profession and raise the price of the service and the incomes of those providing the service. The restriction on entry may be justified on the basis of consumer protection and, in one sense, the resulting increase in price represents the cost to the consumer of that protection, that is the consumer pays. This suggests strongly that where restrictions on entry to an occupation are justified on consumer protection grounds, we should be confident that the restrictions are no tighter than necessary to achieve the safety objective and that there is not some better more direct mechanism to achieve the objective. Otherwise, the consumer will be forced to overpay for the protection and the unintended effect of the regulation will be to redistribute wealth from consumers to the regulated profession. Therefore, an important objective of regulatory reform of occupations should be to ensure that regulations which have the effect of increasing the returns to occupations have some legitimate justification.

Sorting appropriate from inappropriate justifications for regulations requires policy analysts to ask the question of what is the perceived problem that is to be addressed and why is it necessary to address it by regulation as opposed to a non-regulatory option. In particular, it is important that the objective of a

regulation is thoroughly assessed and that the various ways to achieve that objective and the actual outcome of a regulation are analysed. Assessing all regulations from an economy-wide perspective, as opposed to the perspective of only those being regulated, is very important if these problems are to be avoided.

Using that framework, we can define good quality regulation as regulation which achieves appropriate objectives in the most efficient way. Poor quality regulation can either have inappropriate objectives or achieve appropriate objectives in an inefficient way or with unintended consequences. Compliance costs are also important in this context. Experience in a number of countries has shown that substantial compliance costs can give rise to an increased incidence of non-compliance.

The following sections of the paper examine the various ways that regulation can achieve its objectives and illustrate the types of regulation which are likely to be most efficient.

FORMS OF OCCUPATIONAL REGULATION

The introduction foreshadowed the complex issues of the level at which regulation should be imposed and the structure of regulatory institutions. Before addressing those issues, this part of the paper briefly sets out the various types of sector specific occupational regulations that are commonly imposed by governments. Many occupations have some form of specific regulation in Australia. For the most part this is a responsibility of State Governments, given that the Commonwealth Government generally does not have specific constitutional power to regulate occupations.

Occupational regulations can deal with entry barriers, transactions, and redress mechanisms and can vary in the degree of restrictiveness.

Entry Barriers

Many occupations have barriers to entry. These barriers can take a variety of forms.

Registration requires practitioners to register to be able to provide a particular service. Requirements for registration can include appropriate educational qualifications and/or membership of professional bodies. In addition, candidates for registration may need to pass probity tests or satisfy the criteria to be a 'fit and proper' person. Registration schemes can be run by government agencies or by self-regulating industry bodies. In Australia registration schemes apply to regulate entry into a range of occupations such as law, accounting and health services.

Licensing is similar to registration in the sense that the grant of a licence to practise an occupation is often dependent on formal qualifications, approved training periods, or general probity tests. However, licensing can restrict entry into an occupation and place restrictions on the range of activities that an individual can carry out. Licences can be issued by government agencies or by industry licensing boards. In Australia licences to practise have been traditionally associated with many occupations, including construction and manufacturing, engineering trades and agricultural industries as well as lawyers, accountants and other service professionals. For most occupations the licence to practise has been valid only within the jurisdiction in which the licence was granted. An additional licence has been required to practise in another State or Territory.

Negative licensing is an approach where individuals are generally entitled to practise but can be prohibited from practising if they have committed some form of offence deemed serious enough to warrant exclusion from the industry. Negative licensing imposes lower barriers to entry than licensing.

Whilst not strictly restricting market entry, other forms of occupational regulation such as certification and information regulations are also aimed at ensuring that acceptable standards of conduct in practice are maintained.

Certification or accreditation is usually administered by a certification body responsible for keeping a 'list' of those practitioners who have reached a certain level of competency or meet other standards. These schemes are usually non-legislative and fostered by industry bodies. However, whereas certification indicates the achievement of a certain level of expertise or competency, a non-certified practitioner may also be able to provide similar services. For example, certified practising accountants (CPA) are distinguished from those accountants who have not completed the additional study required to become a CPA.

Accreditation operates in a similar way. For example, under an Agricultural and Veterinary Chemicals Accreditation Scheme administered in some jurisdictions, manufacturers, distributors and retailers who are not accredited with necessary training in the appropriate handling and storage of chemicals can be prevented from trading in chemicals.

Transaction Content Regulation

Information regulations are designed to directly address information asymmetries. They may require government warnings, or may require a practitioner to provide specific guidance to a potential consumer. They are generally considered to be the least intrusive form of regulation.

Transaction regulations may also deal with price and other forms of regulation. In this context occupational regulation is part of the broader mosaic of regulation. For example, building codes and legal procedures provide a range of regulations to ensure quality standards.

Performance Based Regulation

It is commonly stated that performance based regulation focussed on outputs is generally to be preferred to prescriptive regulations which control inputs. This is because input controls tend to be more restrictive of innovation and competition. For example, in environmental regulation, it is usually better to specify permissible levels of emissions (a performance target) rather than specify a particular technology (ie, an input) that must be used in the production process. The performance based regulation allows and rewards firms to adopt the most cost-effective means, or invent a better means, to achieve the emissions target. The means found by the firm may or may not be the technology that would have been chosen at a particular point in time by the regulator.

In occupational regulation, entry barriers are more in the nature of input controls than performance based criteria. To the extent that this is justified, it should be because performance based criteria would not provide adequate protection to consumers due to a significant risk that unqualified persons would not be able to systematically provide services that would reach reasonable performance criteria and that the risk associated with a substandard service was very high.

SECTOR SPECIFIC AND GENERAL REGULATION

The justification for specific occupational regulation through Commonwealth, State and Territory legislation is that there may be individual issues that need a tailored solution, or the consequences of inappropriate behaviour are so serious that there needs to be more stringent safeguards than would normally be required. However, the various approaches to regulation are not necessarily mutually exclusive. Rather, the approach adopted is usually a combination of the approaches described above and reliance on general law. Also, some State and Territory legislation provides for some professional associations (generally unincorporated) to set standards for entry into the occupation, to make rules for the conduct of practitioners and set other consumer safeguards. Safeguards usually extend to redress mechanisms should inappropriate behaviour be

detected. Aggrieved consumers can then access accelerated dispute settlement procedures in addition to access to general legal processes.

The above discussion illustrates that the overall regulatory structure applying to an occupation is often complex. This complexity can itself pose a challenge for the reform task because analysis of and agreement about the appropriate objectives of the regulation, or the best means to achieve the objectives, may not be straightforward. It has been our experience in some regulatory reform exercises that there has not been agreement among the staff of the relevant regulator as to their objectives.

The decision of whether there should be regulation will depend on the nature of the transaction which is to be regulated (ie, the seriousness of the consequences that would flow from inappropriate behaviour) and the likely effectiveness of different mechanisms. It does not necessarily follow that more serious consequences always imply that a regulatory solution should be adopted. In many cases government action will not be the most effective solution as the government may suffer from a lack of information and capacity to enforce regulations. Dispersed information held by groups and individuals that are closer to the industry may be more reliable and a better basis for action. In these situations it may be more appropriate for standards of practice, for example, to be developed and regulated by the profession rather than prescribed by government. Or, the cultural context and general mores of social behaviour may impose significant sanctions for inappropriate behaviour through loss of face and reputation within the community.

Alternatively, the general legal and institutional structures which apply across the economy may be sufficient to appropriately control behaviour. In an Australian context this includes the Commonwealth's *Trade Practices Act 1974*, individual State and Territory fair trading legislation and common law principles of contract and tort and equity. (An important issue in occupational regulation is the extent to which specific regulation should displace the general law. This is discussed further in the following section.)

The general policy principle, that minimum feasible regulation be targeted directly at the identified objective, offers some guidance on the issue of whether general or sector specific regulation should be adopted to address particular issues. Put simply, if an issue is of general concern, such as the potential for 'misleading conduct', that would be best addressed through legislation that is generally applicable. Addressing the general issue of misleading conduct on a sector by sector basis can invite problems if all sectors are not covered. On the other hand, if there is an issue that is specific to a sector, such as the need for lawyers to observe a higher than normal standard care, then that should be addressed in some form of sector specific regulation. There is a considerable risk that departures from minimum feasible regulation will give rise to unintended consequences.

REGULATORY FAILURE

In practice regulation does not always achieve its objective and there can be undesirable side effects. This section addresses how we should evaluate regulation and desirable properties that should be considered when setting regulations.

Three key questions arise when considering the actual regulations that are in place. First, are the regulations poorly targeted to address the identified problems? Second, do they have unintended consequences? Third, are other policy instruments better equipped to address the same problems? If the answer to any of these questions is 'yes', then it is said that there is 'regulatory failure'. In the broad, the rationale for regulation is to address some form of market failure. Nevertheless, policy makers need to be acutely aware of the possibility of regulatory failure. There is a risk that in addressing a market failure, regulators can substitute a regulatory failure which may have worse consequences than the initial market failure. Ensuring that the process of regulation setting and review follows sound principles reduces the likelihood of regulatory failure. Regulations should address a clearly stated objective, be analysed from an economy-wide perspective, be the minimum feasible regulation, and be periodically reviewed by appropriate bodies.

Even if regulations were appropriately targeted when established, it is possible that the context and application evolve over time such that the regulation no longer addresses the objectives effectively. Two issues that need to be considered are 'regulatory capture' and 'regulatory drift'. Regulatory capture occurs when a regulator takes decisions which are biased in favour of the industry that is being regulated. There is a particular risk that this can occur when professional bodies or associations representing an occupation have an operational responsibility to set standards of entry, in addition to carrying out registration, licensing or even certification functions. Professional bodies may be keen to maintain the incomes of existing practitioners and can do so by restricting the supply of practitioners through high entry standards.

For example, the 1994 Baume Report, commissioned by the Commonwealth Government found that the Royal Australasian College of Surgeons and other associations of specialist surgeons exercised an exceedingly high level of control over the supply of qualified general surgeons as well as the number of surgeons in various specialities. It has been suggested that the control of supply by these medical bodies is reflected in the fees and charges surgeons are able to command. A range of other studies have made similar links between the control of supply and high costs in relation to legal and accounting services.

While entry standards may be necessary to ensure consumer protection, capture of the processes of occupational regulation may lift standards above the level which is really necessary. This may create skilled, high cost services to an extent that lower quality, lower priced services are eliminated from the market. If so, consumers who cannot afford high cost services, but may be adequately served

by a less qualified practitioner, tend to be marginalised or even excluded from the market. Where this occurs, governments may feel obliged to intervene further in the market to subsidise particular consumers to allow them access to the services. In effect, this is an additional layer of regulation with the objective of counteracting the effect of the regulatory failure. However, a more direct means to address the issue is to address the prime cause of the regulatory failure.

Two factors can ameliorate the potential problems of professional regulation outlined above. First, self-regulatory actions of professional bodies should be subject to competition law or to some other means of control if a competition law is not applicable. Second, consideration should be given to ensuring that the professional governing bodies are not dominated by those that are being regulated. For example, restrictions may be placed on the number of board members who have a pecuniary interest in the regulated industry. Of course, in setting such restrictions due account should be given to the need to have members with specialist expertise.

Another concern is that even if regulations could be said to be appropriate when adopted, they can cease to be appropriate over the passage of time. Such 'regulatory drift' can result from structural change in the economy due to changing technology or consumer preferences. The required level of consumer protection may rise (if services become more complex) or fall (if consumers become more sophisticated). This suggests that it is desirable from time to time to review regulations to ensure that they remain fit for purpose.

REFORM OF OCCUPATIONAL REGULATION

The previous parts of this paper have developed a number of reform principles. In this part, those themes are further developed and illustrated with a number of examples from recent experiences in Australia.

Broadly, there are two distinct elements to regulatory reform — a substantive element and a procedural element.

The reform of substantive regulation applying to a sector is often called 'deregulation'. But that term can be misleading, as reforms of this type are really aimed at better quality regulation. In some circumstances, that can actually imply more regulation. Moreover, such substantive reform can often involve an easing of the prescriptiveness imposed by regulations, rather than a strict reduction in their volume. In general, such reform should aim at maintaining necessary consumer protection mechanisms while increasing flexibility for providers of goods and services. As a first step, this usually involves an assessment of the costs and benefits associated with regulation. Where necessary, it involves the pursuit of more cost-effective forms of regulation. Thus, prescriptive type regulation could be replaced by performance based regulation, where the quality of services provided by an occupation is regulated

by standards and performance measures. Governments, industry bodies and consumer groups could participate in the development of standards and performance indicators so that the priorities of each were being met by regulation. This kind of regulatory practice enables all participants in the market to take advantage of changing circumstances and adjust their priorities accordingly, without undermining the purposes of regulation.

Governments can reform their own internal processes for making regulation, with the objective that improved processes will help to ensure that new regulation is of better quality. This could involve a range of management techniques applicable in any particular situation. In Australia this process has involved a number of measures such as; provisions in specific legislation for the periodic review of that particular Act and associated regulations; providing for the review of legislation in general to determine anti-competitive effects and avenues of reform; requiring proposals for new regulations or amendments to existing rules to be accompanied by regulatory impact statements; and sunset arrangements. Collectively, these are called 'regulatory quality' mechanisms. Regulatory quality mechanisms can help to avoid and wind back the all too evident problems of the 'regulatory inflation' that many countries have experienced over recent decades.

In Australia, Commonwealth, State and Territory Governments have been applying these measures for some time with respect to occupational and other services that fall within the scope of their respective jurisdictions. However, towards the beginning of the 1990s, Australian Governments increasingly recognised that the reform process may benefit from the development of a national framework that establishes guiding principles to encourage comprehensiveness and greater consistency of reform across jurisdictions. The most obvious benefit of consistent reform practices identified by governments is the facilitation of national markets for goods and services to assist with Australia's international competitiveness.

To facilitate consistency in general structural reform, including changes to occupational regulation, and encourage national markets for goods and services, Australian Governments have developed and are involved in implementing two primary reform models. These are: the National Competition Policy Framework; and procedures for mutual recognition of occupational qualifications between Australian jurisdictions and between Australia and New Zealand.

National Competition Policy

On 11 April 1995, Heads of Government signed three intergovernmental agreements which set out the guiding principles and processes for National Competition Policy (NCP). This includes reforms to the competition law, a range of infrastructure reforms, reforms relating to government commercial activities and a range of general regulatory reforms. In regard to occupational regulation, the primary relevant components of NCP are twofold.

Extension of the Trade Practices Act

All Australian Governments agreed that the competitive conduct rules in the Trade Practices Act would be made to apply to all government business activities and to individuals and unincorporated associations. This is a substantial extension of the application of the competition law which previously had only applied within the limits of the constitutional power of the Commonwealth Government. In broad terms this meant that the law generally applied only to corporations and to some government business activities. The extension of the law was achieved by means of a cooperative legislative scheme whereby all Governments apply the competition law to the full extent of their constitutional competence. Enforcement responsibility is referred by all Governments to a single national competition regulator, the Australian Competition and Consumer Commission (ACCC). This scheme came into effect from 21 July 1996. As a result, the professions and occupations, many of which are not usually incorporated, are now generally subject to the competition law.

The Trade Practices Act specifies the competitive conduct rules for behaviour in the Australian market place and is a key element in the regulation of the general economy. Among other things, the Act specifies that the following behaviour is prohibited:

- agreements, arrangements and understandings which have the purpose or effect, or likely effect of substantially lessening competition;
- agreements, arrangements and understandings between competitors where they refuse to acquire goods or services from or supply goods or services to another person (referred to as a primary boycott);
- agreements which in effect fix or maintain prices;
- actions by persons that have a substantial degree of market power which intentionally eliminate competitors or prevent others from entering any market or engaging in competitive conduct in any market;
- arrangements that make it a condition of supplying goods or services that the buyer must refuse a competitor's goods or services or accept goods or services from a third person (referred to as exclusive dealing);

- arrangements where a supplier requires the person receiving the goods or services not to sell those goods to another person at less than a price set by the supplier (referred to as resale price maintenance); and
- mergers that lead to a substantial lessening of competition.

These competitive conduct rules limit the ability of persons engaged in occupations from behaving in anti-competitive ways.¹ This includes conduct by professional bodies and any occupational rules (agreements) or regulatory activities made or undertaken by such bodies. For example, if rules established by professional bodies included controls on location of their members' businesses which had the effect of market sharing, these could be regarded as anti-competitive and illegal.

Nevertheless, the law recognises that some agreements which restrict competition may be justified if the restriction yields an overall public benefit. If so they can be authorised through a public process which weighs the anti-competitive detriment against the public benefit.

It is recognised that many self-regulatory activities by professional bodies are desirable. If these rules are anti-competitive they could be subject to authorisation by the ACCC. What will be required under the law is a determination that any anti-competitive effects are not unjustifiably restrictive and have a net public benefit.

An example of an authorisation of this kind comes from the Australian Institute of Valuers and Land Economists which approached the ACCC for an authorisation for its code of ethical and commercial practice. Amongst other features, the code provided for an enforcement process and required registered practitioners to engage in the Institute's continuing professional development programme to qualify for further certification. Although some jurisdictions regulate valuers through registration, the Institute recognised that with the development of mutual recognition arrangements between States, partial registration may be replaced by national deregulation. In this context, the Institute took the view that its national code of practice was essential to maintain and enforce standards with respect to the activities of all registered practitioners. Given the possibility that deregulation would leave the Institute as the sole industry regulator, the ACCC agreed that the code held significant benefit for consumers and authorised its application, subject to conditions minimising its anti-competitive effect.

As a result of the extension of the Trade Practices Act occupational or professional associations now need to consider the anti-competitive effect of their existing and/or proposed activities and rules, and the likelihood of

1 The law provides a general exemption in respect of contracts for labour. Hence, the collective bargaining activities of unions and their members in respect of conditions of service are not contrary to the law.

authorisations for such practices. Where authorisations are not granted, occupations will need to consider changing their practices or amending their rules. Consideration of these issues will need to be ongoing, evolving in concert with the review and revision of occupational rules by professional bodies and/or government.

The general application of competition law in Australia to limit regulatory capture by professional bodies reflects a policy preference that competition issues of this type should be subject to general prohibitions rather than a sector by sector treatment. That said, if there is no competition law applicable to this type of activity, a sector by sector approach should be considered.

Review of Anti-Competitive Regulation

Government regulation can also bring about anti-competitive outcomes by creating entry barriers or mandating particular conduct. Generally, neither the regulation itself nor the conduct of those complying with the regulation will be contrary to the competition laws.² Much occupational regulation is of this type.

All Australian Governments have agreed to review, and where appropriate reform, all anti-competitive legislation (including regulations) by the year 2000. The guiding principle of legislation review specified under NCP is that legislation should not restrict competition unless it can be demonstrated that:

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

Attachment A contains an extract from the Competition Principles Agreement which sets out further details. More than 1500 separate enactments have been scheduled by all jurisdictions for review under the programme. Legislation that provides for regulation of occupations and is considered to be anti-competitive is subject to the required cost/benefit assessment by the relevant jurisdiction in order to determine whether the Act or regulation should be retained without amendment, amended or repealed. Attachment B provides a matrix of selected occupational regulation that will be subject to review. The reviews will be

² It is possible for such regulation/conduct to be inconsistent with the competition laws, say if the regulation permitted price collusion in a particular profession. In this event the competition laws would prevail, unless the regulation were in a transparent form specifically exempting the conduct from the Trade Practices Act. Such exempting regulations are an alternative to the authorisation procedure. Any such exemptions must specifically identify the conduct concerned and reference it as exempt from the Act. As inherently anti-competitive regulations, such exemptions are subject to the regulatory quality mechanisms discussed below. Any exemption enacted by the Commonwealth Government must be specifically approved by the Treasurer. It is also possible for the Commonwealth Government to override exempting regulations made by a State or Territory Government.

required to address the issues explored in this paper, including identifying the objective of the regulation and considering alternative mechanisms to achieve the objective. In some cases jurisdictions may agree to nationally coordinated reviews. Such reviews may occur where State or Territory legislation complements Commonwealth legislation or where regulated activities are common to a number of jurisdictions. National reviews may be conducted by an independent person(s) appointed by jurisdictions, the newly created National Competition Council (NCC), or perhaps dealt with by the relevant Ministerial Council.

As part of the Competition Principles Agreement the Commonwealth Government agreed to make payments to the States and Territories if they made satisfactory progress with competition policy reforms. The NCC plays a role in enhancing the transparency of the process and assessing the progress of the States and Territories.

The NCP effectively places the onus on the person seeking to retain or introduce a legislative or regulatory restriction on competition to prove that the restriction is justifiable. Importantly, this marks a departure from the common onus of proof which rests with the proponent of change to demonstrate the benefits of moving from the status quo. A broad range of restrictions are captured within the NCP framework. For example, the Queensland Government in its Legislative Review Schedule has classified restrictions against each piece of legislation. The restrictions are: outright prohibition; statutory monopoly; licensing or registration; quantitative entitlements; quality/technical standards; pricing restrictions; business conduct restrictions; preferred supplier/customer arrangements; measures that confer benefit; natural resources permits and licences; and restrictions on out of State parties.

The principle that regulation should only restrict competition if it is necessary to achieve the objective of the regulation recognises that restricting competition can often have unintended consequences and that there will commonly be more direct or less restrictive ways to achieve the desired objective. By way of example, it would be reasonable to argue that strict qualification requirements were necessary to ensure the safety of brain surgery. But it would generally not be reasonable to argue that a numerical limit on the number of taxis was necessary to ensure the safety of taxi travel — a more direct regulatory mechanism would be to prescribe minimum maintenance standards for taxis.

The NCP legislation review principles are also applicable to new regulation as part of the regulatory quality mechanisms. To meet this requirement jurisdictions require proposals for new legislation or amendments to existing legislation to be accompanied by regulatory impact analyses which are designed to indicate whether the proposed regulation imposes restrictions on competition and meets other regulatory best practice principles. Relevant central agencies in jurisdictions are responsible for assessing the comprehensiveness and appropriateness of such statements before the regulatory proposal is considered by Cabinet.

In concert with the ratification of NCP at their meeting in April 1995, Heads of Government also agreed to *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies*. The guidelines identify the elements of appropriate regulation and propose a number of principles to guide regulatory action by Commonwealth-State Ministerial Councils and other national standard setting bodies. The recommended principles are designed to apply to agreements or decisions which are to be implemented through legislation, regulation, administrative directions or other measures and which would have the effect of encouraging or compelling businesses or individuals to act in ways they would not have otherwise done. Further details are in Attachment C. A number of States have issued guidelines which implement similar principles.

Some Examples

The review of legislation and regulations, development of better regulatory management systems, improvements to the quality of regulation, and deregulation processes able to be applied under the NCP framework are significant tools in the reform of occupational regulation. They bring the regulation of occupational services in line with general structural reforms being applied to the Australian economy and therefore represent a recognition by governments that occupational regulation must reflect changes in practice, law and custom, if it is to foster the most appropriate outcomes for consumers and service providers. The NCP regulation review process is at a relatively early stage. Nevertheless, there have been a number of results in the area of occupational regulation which illustrate potential outcomes.

The New South Wales (NSW) Parliament has recently passed the State Government's *Regulation Reduction Act 1997* which repeals 85 occupational licences in a number of areas including agriculture, construction and manufacturing, entertainment, the environment and pest control. These licences were considered to hinder competition within the respective industries by imposing unnecessary costs on commerce and limitations on the movement of labour, to an extent that outweighed any net public benefit. The review and repeal of these licences is consistent with and an integral part of the NSW Government's legislation review programme under NCP.

The Commonwealth reviewed the patent attorney profession in 1996. The review report addressed the regulatory regime for patent attorneys, as well as for trademark and designs practitioners. The Government has announced reforms to the profession with measures such as:

- allowing any person, including those without qualifications, to prepare and lodge trademark applications;
- a new title, known as Trademark Attorney, will be introduced, requiring a lower level of qualifications than those for patent attorneys. This will be an accreditation mechanism;

- accreditation has been transferred to universities in line with other careers;
- the Patent Attorneys Professional Standards Board will now have members from user groups; and
- allowing more flexible business structures, including mixed partnerships of patent attorneys and lawyers.

However, the Government decided that it would not substantially reduce the entry requirements and reserved work area of patent attorneys. This reflected an assessment of the risk for users of the patent system if entry restrictions were relaxed given that a patent application is a 'one shot' process and there are substantial risks of losing patent protection if a patent application is misspecified.

The Queensland Government has undertaken a review of the health professions in that State. A comprehensive discussion paper with recommendations was released for comment in September 1996. The discussion paper includes the Queensland Government's preferred position at the time of release. Some of the reforms that are proposed in the paper include:

- ownership restrictions will be removed in most health professions;
- significant reductions in the controls on advertising;
- the number of consumer members on registration boards will be increased; and
- an independent Health Practitioner Tribunal will deal with serious issues of misconduct. This would represent a substantial simplification of present redress mechanisms.

Mutual Recognition

Technological and other developments in a range of service, construction, entertainment, agricultural and other industries mean that a far greater proportion of services are traded across jurisdictional boundaries. This is particularly the case when the physical location of the service provider does not have to be in the same location as the service recipient. If the primary rationale for occupational regulation is consumer protection, then these concerns obviously extend to services provided from another jurisdiction (or provided by the resident of another jurisdiction). Accordingly, if a particular jurisdiction wants to ensure that its consumers are adequately protected, then it generally needs to be convinced that appropriate quality standards are met by all providers.

Traditionally this has been achieved by prescriptive jurisdictionally based standards being imposed. This tended to be the case in Australia where each State jurisdiction had distinct rules, interests and history governing its approach

to regulation. For example, in some States lawyers are able to gain admission as solicitors and barristers simultaneously. In other States lawyers must either be registered as a barrister or solicitor, but not both at the same time. Such distinct arrangements may create barriers to entry or other restrictions on practice. Hindering the mobility of labour contributes to the control of supply that many professional or occupational associations enjoy, thereby assisting an environment in which costs of services can be kept high.

Resolution of problems caused by divergence of regulation between jurisdictions can be pursued either through efforts aimed at convergence (as is happening to some extent in Australia in the legal services markets) and/or through mutual recognition arrangements. Mutual recognition arrangements provide for out of jurisdiction practitioners to provide equivalent occupation services within a jurisdiction with minimum constraints. Mutual recognition can be used where jurisdictions agree that it is not necessary to have complete uniformity in occupational regulation across jurisdictions but they nevertheless have sufficient confidence in the regulatory processes of other jurisdictions to rely on the registration decisions of those jurisdictions. Mutual recognition requires agreement between jurisdictions on what constitutes equivalent occupations and can also include cooperative efforts to establish competency standards.

Mutual recognition arrangements with respect to occupational registration and licensing can assist with remedying restrictions on competition within regional markets by increasing the degree of integration with other markets. Importantly, mutual recognition can also reduce the influence of regulatory capture, as those aiming to exclude new entrants would need to capture the regulatory processes in all jurisdictions subject to mutual recognition.

In 1992 Australian Heads of Government signed the *Intergovernmental Agreement on Mutual Recognition*. This agreement is given effect to by the Commonwealth's *Mutual Recognition Act 1992* and complementary State legislation. The mutual recognition scheme has two principles:

- goods sold lawfully in one jurisdiction may be sold in any other, even though the goods may not comply with all the details of the regulatory standards in the second jurisdiction; and
- a person registered in one jurisdiction can be registered to carry out the equivalent occupation in any other jurisdiction, without the need for further assessment or qualifications.

With respect to occupational services the mutual recognition scheme includes registration, licensing, approval and admission requirements, certification, and any other form of authorisation necessary for carrying out an occupation. Simply, the scheme entitles a person registered in one Australian jurisdiction to register in any other Australian jurisdiction. If an occupation is not equivalent between jurisdictions it is possible for some limitations to be placed on the scope of practice of the out of jurisdiction applicant. There are also cooperative mechanisms involving Ministerial Councils to establish competency standards

where jurisdictions choose to harmonise standards or where disagreements as to the appropriateness of a standard arise in respect of a particular jurisdiction. Jurisdictions have agreed to be bound by a two-thirds majority of jurisdictions in determining new or modified competency standards. The *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies* apply in respect of any competency standards developed by relevant Ministerial Councils. It is important to note that these principles require that, where possible, regulatory standards should be consistent with international standards and practice. The scheme does not affect initial registration requirements nor regulations relating to the conduct or practices of occupations in particular jurisdictions.

In June 1996, Heads of Government agreed to extend the current Mutual Recognition scheme to include New Zealand according to a Trans-Tasman Mutual Recognition Arrangement. Legislation to enact the Trans-Tasman Mutual Recognition Agreement is currently before the Commonwealth and New Zealand Parliaments. The Agreement provides for reciprocal treatment between New Zealand, Australia and the Australian States and Territories. A person wishing to practice in the other country need only give notice of their registration to the local registering authority in the other country. Mechanisms are also established to facilitate setting of competency standards as in the Australian Mutual Recognition Agreement. The only exception to mutual recognition of occupations is the medical profession which has been specifically excluded.

Similar initiatives are being discussed at APEC level. The Human Resources Working Group is currently conducting a study into the comparability and disparity of skills testing standards in the Asia-Pacific region, in order to develop a feasible basis for mutual recognition among APEC members.

The major benefit of mutual recognition is to remove barriers to trade between broadly similar systems. Nevertheless, there are some limitations on the effectiveness of mutual recognition schemes. Such schemes work well when the occupation in the jurisdiction where the practitioner is registered and the occupation in the jurisdiction where he/she is applying for registration is substantially the same. Difficulties can arise, for example, in a situation where a practitioner from one jurisdiction which does not require registration seeks to become registered in another jurisdiction. In other words, if the regulatory frameworks are not compatible, mutual recognition may be of little assistance. In these circumstances if jurisdictions wish to bring their markets together on a reciprocal basis, they may need to first consider some form of regulatory convergence. The existence of a mutual recognition scheme does create an incentive for jurisdictions to pursue convergence of national standards for occupational registration and licensing. In Australia, mutual recognition has encouraged the development of national minimum standards for the practice of medicine and the development of registration rules for lawyers that ensure

consistency between jurisdictions. The Principles and Guidelines for National Standards Setting discussed above are of course designed to assist this process.

It has proved more difficult to pursue convergence where one or more jurisdictions wishes to maintain non-registration of a particular occupation but this is not regarded as a major difficulty — a person wishing to practise Australia-wide in such partially registered occupations need only satisfy registration requirements in the jurisdiction that has the least restrictive registration requirements.

The last point serves to illustrate that convergence in regulation need not be pursued as an end in itself. There are some benefits in ‘regulatory competition’ between jurisdictions in terms of discovering better ways to regulate particular sectors. Conversely, if all jurisdictions are required to have the same regulation, this can give rise to a regulatory gridlock problem where it is difficult to implement beneficial changes to regulation. Indeed, this can be seen as one of the major benefits of the mutual recognition approach as it allows jurisdictions a degree of flexibility to pursue regulatory reforms without necessarily having to get agreement of all other related jurisdictions once there has already been a substantial degree of regulatory convergence. In that sense, mutual recognition is an important step to ensure that there are no non-tariff barriers to trade.

CONCLUSION AND GENERAL PRINCIPLES

Occupational regulation has a legitimate underlying rationale to protect the consumer due to the complexity of the services in question. However, actual regulations may not be well targeted to address these rationales and may be captured by and confer inappropriate benefits upon those who are regulated. Governments have become more aware of potential problems with regulation and have initiated a range of review processes and ongoing accountability mechanisms to make regulation more effective.

The discussion in this paper has raised a number of questions regarding appropriate policy towards regulation. The following principles attempt to capture the answers to these questions.

- The objective of a regulation should be clearly identified and the need for a regulatory solution should be demonstrated.
- The merits of a regulation should be assessed from an economy-wide perspective.
 - That includes an assessment of the interests of those who the regulation is intended to benefit and those who are regulated, including the compliance costs. Where feasible, this should include consultation with affected parties.

- Minimum feasible regulation which minimises restrictions on competition should be used to ensure that regulations are well targeted and to minimise the likelihood of unintended consequences of regulation.
 - The effects of various options (including non-regulatory options) should be analysed, including direct and secondary effects and implementation issues, to determine the net costs and benefits of the options.
 - Where possible, regulatory standards should be consistent with international standards to minimise barriers to international competition.
- Competition law or some other controls should apply to ‘self-regulatory’ activities of professional organisations to ensure that these do not bring about unjustified restrictions on competition.
- Jurisdictions should ensure that regulatory bodies are comprised of members that strike an appropriate balance between the need to have regulations set and administered by individuals with sufficient expertise, and the need to ensure that representatives of an occupation do not have inappropriate control over entry and conduct in a profession.
- Regulations should be subject to an ongoing review process to ensure that the rationale for their existence remains relevant, and to ensure that the regulation remains the best way of addressing any underlying problem.

ATTACHMENT A – EXTRACT FROM COMPETITION PRINCIPLES AGREEMENT

Legislation Review

1. The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
 - a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - b) the objectives of the legislation can only be achieved by restricting competition.
2. Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.
3. Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.
4. Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.
5. Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).
6. Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.
7. Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.
8. Where a Party determines a review should be a national review, the Party may request the [National Competition] Council to undertake the review. The Council may undertake the review in accordance with the Council's work programme.
9. Without limiting the terms of reference of a review, a review should:
 - a) clarify the objectives of the legislation;
 - b) identify the nature of the restriction on competition;

- c) analyse the likely effect of the restriction on competition and on the economy generally;
 - d) assess and balance the costs and benefits of the restriction; and
 - e) consider alternative means for achieving the same result including non-legislative approaches.
10. Each Party will publish an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

ATTACHMENT B – OCCUPATIONAL REGULATION: SELECTED REVIEWS BY JURISDICTION

Legislation Group	Victoria	New South Wales	Western Australia	Queensland	South Australia	Tasmania	Australian Capital Territory	Northern Territory
Real Estate Agents & Auctioneers	Estate Agents Act 1980 & Regs, Auction Sales Act 1958 1996-97 review		Auction Sales Act 1973 & Regs 1998 review Real Estate & Business Agents Act 1978 2000 review Settlements Agreement Act 1981 & Regs 1997 review	Auctioneers & Agents Act 1971 & Regs 1996-97 review	Land Agents Act 1994 2000 review	Auctioneers & Real Estate Agents Act 1991 national review proposed	Agents Act 1968, Auctioneers Act 1959 1996 review	Agents Licensing Act, Auctioneers Act 1997-99 review
Chiropractors and Osteopaths	Chiropractors and Osteopaths Act 1978 review completed	Chiropractors and Osteopaths Act 1991 1997-98 review	Chiropractors and Osteopaths Act 1964 & Regs 1997 review	Chiropractors and Osteopaths Act 1979 review underway	Chiropractors Act 1991 national review proposed	Chiropractors Registration Act 1982 national review proposed	Chiropractors and Osteopaths Act 1983 timing of review to be announced	Health Practitioners & Allied Professionals Registration Act review by end 1997
Dentists	Dental Act 1972 & Regs, & Dental Technicians Act 1972 1996-97 review	Dentists Act 1989 1995-96 review Dental Technicians Registration Act 1975 1999-2000 review	Dental Act 1939 & Regs, & Health (School Dental Therapists) Regs 1974 1999 review	Dentists Act 1971, Dental Technicians & Prosthesis Act review underway	Dental Act 1984 national review proposed	Dental Act 1982 national review proposed	Dentists Registration Act 1931, Dental Technicians & Prosthesis Registration Act 1988 timing of review to be announced	Dental Act review by June 1997

Legislation Group	Victoria	New South Wales	Western Australia	Queensland	South Australia	Tasmania	Australian Capital Territory	Northern Territory
Lawyers		Legal Professions Act 1987 1996-97 review Conveyancers Licensing Act 1995 1999-2000 review	Legal Practitioners Act 1983 1996 review	Legal Practitioners Act 1995 1998-99 review	Legal Practitioners Act 1981 1997 review Conveyancers Act 1994 2000 review	Legal Practitioners Act 1993 national review proposed	Legal Practitioners Act 1970 timing of review to be announced	
Doctors	Medical Practice Act 1994 1998 review	Medical Practice Act 1993 1995-96 review	Medical Act 1984 1997 review	Medical Act 1939 review underway	Medical Practitioners Act 1983 national review proposed	Medical Practitioners Act 1996 national review proposed	Medical Practitioners Act 1930 1996 review	Medical Act review by June 1997
Nurses	Nurses Act 1993 1998 review	Nurses Act 1991 1997-98 review	Nurses Act 1992 1997 review	Nurses Act 1992 & Nursing By-Law 1993 1998-99 review	Nurses Act 1984 national review proposed	Nurses Act 1995 national review proposed	Nurses Act 1988 timing of review to be announced	Nursing Act review completed
Radiographers	Health Act 1958 (Radiographers) 1998-99 review Health (Radiation Safety) Regs 1994 1998-99 review	Radiation Control Act 1990 review completed Radiation Protection Control Act 1982 1998 review	Radiation Safety Act 1975 & Regs 1999 review		Radiation & Protection Control Act 1982	Radiographers Registration Act 1971 national review proposed	Radiation Act 1983 1997 review	Radiographers Act Review by June 1997
Optometrists	Optometrists Act 1958 & Regs review completed	Optometrists Act 1930 1996-97 review Optical Dispensers Act 1963 1999-2000 review	Optometrists Act 1940 & Regs 1997 review Optical Dispensers Act 1963 1997 review	Optometrists Act 1974 review underway	Optometrists Act 1920 national review proposed	Optometrists Act 1994 national review proposed	Optometrists Act 1956 review completed	Optometrists Act 1997 review

Legislation Group	Victoria	New South Wales	Western Australia	Queensland	South Australia	Tasmania	Australian Capital Territory	Northern Territory
Pharmacists	Pharmacy Act 1974 & Regs 1997-98 review	Pharmacy Act 1964 1997-98 review	Pharmacy Act 1964 & Regs 1997 review	Pharmacy Act 1976 review underway	Pharmacy Act 1991 national review proposed	Pharmacy Act 1908 national review proposed	Pharmacy Act 1931 review completed	Pharmacy Act review completed
Physiotherapists	Physiotherapists Act 1978 & Regs 1997 review	Physiotherapists Registration Act 1945 1997-98 review	Physiotherapists Act 1950 & Regs 1997 review	Physiotherapists Act 1964 & Regs review underway	Physiotherapists Act 1991 national review proposed	Physiotherapists Registration Act 1951 national review proposed	Physiotherapists Act 1977 1996 review	Health Practitioners & Allied Professionals Registration Act review by end 1997
Podiatrists		Podiatrists Act 1989 1996-97 review	Podiatrists Registration Act 1984 & Regs 1997 review	Podiatrists Act 1969 review underway	Chiropodists Act 1950 national review proposed	Podiatrists Registration Act 1974 & 1995 national review proposed	Podiatrists Act 1994 timing of review to be announced	
Psychologists	Psychologists Registration Act 1987 1997 review	Psychologists Act 1989 1996-97 review	Psychologists Registration Act 1976 & Regs 1997 review	Psychologists Act 1977 review underway	Psychological Practices Act 1973 national review proposed	Psychologists Registration Act 1976 national review proposed	Psychologists Registration Act 1994 timing of review to be announced	Health Practitioners & Allied Professionals Registration Act review by end 1997
Ship Pilots	Marine (Navigation & Operation of Vessels) Act 1996-98 review	Marine Pilotage Licensing Act 1971 review completed	Shipping & Pilotage Act 1967 & Regs 1998-99	Transport Operations (Marine Safety Act) 1994 1996-97 review	Harbour & Navigation Act 1993 1997 review			Marine Act Regs review by 30 June 1997
Travel Agents	Travel Agents Act 1986 & Regs 1996-98 review	Travel Agents Act 1986 1997-98 review	Travel Agents Act 1985 & Regs 1998-99 review	Travel Agents Act 1988 & Regs 1997-98 review	Travel Agents Act 1986 national review proposed	Travel Agents Act 1987 national review proposed	Travel Agents Act 1968	

Legislation Group	Victoria	New South Wales	Western Australia	Queensland	South Australia	Tasmania	Australian Capital Territory	Northern Territory
Veterinary Surgeons	Veterinary Surgeons Act 1958 & Regs 1995-96 review	Veterinary Surgeons Act 1986 1996-97 review	Veterinary Surgeons Act 1960 1996-97 review	Veterinary Surgeons Act 1936 1998-99 review	Veterinary Surgeons Act 1992 national review proposed	Veterinary Surgeons Act 1987 national review proposed	Veterinary Surgeons Act 1965 1997 review	Veterinarian Act review by 30 June 1998
Building Occupations - architects - surveyors - engineers - gas fitters - plumbers - drainers	Surveyors Act 1978 1996-97 review Architects Act 1991 1998-99 review Plumbers, Gasfitters & Drainers Registration Act 1981 1998-99 review	Architects Act 1921 review underway Surveyors Act 1929 review underway	Architects Act 1921 & Regs 1997 review Builders Registration Act 1939 & Regs 1999-2000 review Licensed Surveyors Act 1909 & Regs 1998 review Electricity Act 1995 review underway	Architects Act 1985 & Regs 1998-99 review Sewerage & Water Supply Act 1949 1997-99 review Queensland Building Services Authority Act 1991 1997-98 review Electricity Act 1994 1996-97 review Professional Engineers Act 1988 1998-99 review Gas Act 1965 1996-97 review Surveyors Act 1977 & Regs 1996-97 review	Architects Act 1939 national review proposed Plumbers & Gasfitters Act 1995, & Building Work Contractors Act 1995 2000 review	Architects Act 1929 national review proposed	Architects Act 1959, & Plumbers, Drainers & Gasfitters Act 1982 timing of review to be announced Building Act 1972 1997 review Surveyors Act 1967 1997 review	Architects Act, Licensed Surveyors Act, Electrical Contractors Act, Plumbers Drainers Licensing Act reviews to be completed by June 1997
Building and land valuers		Valuers Registration Act 1975 1996-97 review	Land Valuers Licensing Act 1978 & Regs 1999-2000 review	Valuers Registration Act 1992 & Regs 1996-97 review	Land Valuers Act 1994 2000 review	Valuers Registration Act 1974 national review proposed		

ATTACHMENT C – PRINCIPLES OF REGULATION SETTING

In concert with the ratification of NCP at their meeting in April 1995, Heads of Government also agreed to *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies*. The guidelines identify the elements of appropriate regulation and propose a number of principles to guide regulatory action by Commonwealth-State Ministerial Councils and other national standard setting bodies. The recommended principles are designed to apply to agreements or decisions which are to be implemented through legislation, regulation, administrative directions or other measures and which would have the effect of encouraging or compelling businesses or individuals to act in ways they would not have otherwise done.

The principles themselves are also consistent with the aims of competition policy and are particularly useful for improving the outcomes associated with occupational regulation. The principles of good regulation identified by Heads of Government are that:

- the person seeking regulation must prove that it is necessary;
- the overall aim is effective enforcement of identified objectives with a minimum amount of regulation;
- regulations should have a minimal impact on competition;
- regulatory outcomes should be predictable and clearly identifiable;
- where possible, regulatory standards should be consistent with international standards and practice;
- regulations should not restrict international trade;
- regulation should be subject to periodic review;
- nominated outcomes of standards and regulatory measures should be capable of revision; and
- regulation should attempt to standardise the exercise of bureaucratic discretion.

In order to manage these mechanisms to improve the quality of regulation, Heads of Government recommend that Ministerial Councils proposing regulatory controls, and other standard setting bodies, pursue the following objectives of good regulation:

- legislation should contain the minimum regulation necessary to achieve the identified aims;
- the administrative burden of regulation should be reduced;
- proposed regulation should be subject to the regulatory impact process;

- Ministers should secure full government agreement for regulatory action before such matters are considered at Ministerial Council level;
- compliance strategies should ensure the greatest level of compliance at lowest cost to all the parties;
- regulatory measures must take any secondary effects into account;
- standards should be referenced as current editions in appendices rather than included in the regulatory instrument itself;
- regulatory instruments should be performance based, focussing on outcomes rather than inputs;
- commencement of regulatory measures should be planned so as to assist the business or other cycles of affected parties, and provide for a transition to compliance;
- new regulatory measures should be advertised to inform relevant parties; and
- there should be wide public consultation.

These principles go towards the creation of a nationally consistent assessment process for national standards. To facilitate this, Heads of Government have agreed to a number of processes in relation to the development of national standards. Primarily, Ministerial Councils or standards setting bodies must certify that the regulatory impact statement process has been fulfilled in accordance with the guidelines above. A copy of the regulatory impact statement must be forwarded to the Commonwealth's Office of Regulation Review for information. Any proposed national standard may be reviewed where requested by two or more dissatisfied jurisdictions.

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