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CENTRE FOR
INTERNATIONAL
ECONOMICS

NCP review of the Northern Territory Radiographers Act

Prepared for Territory Health Services

FINAL REPORT

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Contents

Executive summary	v
1 Introduction	1
2 The Radiographers Act and its operating environment	3
3 NCP principles	7
4 The objectives of the legislation	9
5 The nature and effects of restrictions on competition	11
Restrictions on entry	12
Restrictions on prices and production	14
Restrictions on quality, level or location of services	14
Restrictions on advertising and promotion	16
Other potential restrictions	16
6 The balance between costs and benefits of each restriction	17
Costs of the potential restrictions on competition	18
Benefits of the potential restrictions on competition	18
Balance between costs and benefits	19
7 Alternative means of achieving objectives	30
8 Recommendations	34
APPENDIX	35
Terms of reference	37
Boxes, charts and tables	
1.1 Acts to be reviewed	2

Executive summary

THE REVIEW OF THE *RADIOGRAPHERS ACT* is one of 12 reviews being undertaken of the Northern Territory's health legislation under National Competition Policy (NCP) requirements. This report briefly describes NCP principles and procedures and provides some background information about the act and procedures adopted in its administration.

Subsequent chapters of the report follow the steps that must be taken in any NCP review, namely to:

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

A final brief chapter presents the recommendations arising from the review.

Features of the legislation that have been identified in chapter 5 as potentially restricting competition include:

- requirements that persons carrying out radiographic procedures be registered as a radiographer in the Northern Territory and hold a practising certificate, which is issued annually (other than persons holding permits to carry out specified procedures);
- qualifications to be registered as a radiographer are established by the radiography profession itself;
- criteria for what constitutes a 'fit and proper person' to be registered as a radiographer are not spelled out in the act;

- radiographic procedures can only be carried out by a registered radiographer at the direction of a registered medical practitioner;
- permits issued by the Radiographers Registration Board to persons other than registered radiographers limit the locations where permitted procedures can be carried out; and
- use of the title 'radiographer' is limited to persons registered as radiographers under the act.

It is stressed that a number of these features of the legislation are *potentially* anticompetitive. Whether they *actually* restrict competition, and what their effects might be, depends on how they are administered and other features of the competitive environment.

Chapter 6 undertakes an assessment of the balance between public benefits and public costs of these restrictions on competition. It is concluded that:

- a 'fit and proper person' requirement is in the public interest, but if the act were to continue
 - the intent of this requirement should be clarified
 - there should be a mandatory requirement to inform the board of any changes of status in these regards
 - and the board should be empowered to act on the basis of such information, subject to normal appeal procedures;
- the net public benefit of the profession determining its own qualification requirements needs to be more heavily qualified – if registration were to continue with restrictions on rights to practise, there should be explicit requirements in the act for
 - the completion of an approved course of studies backed up by an appropriate period of supervised clinical practise as a condition for registration
 - guarantees that changes in professional requirements will not be used to exclude those currently eligible from acquiring or retaining registration
 - a demonstration of continuing and contemporary competence in order to obtain a practising licence and thereby retain registration;
- registration which conveys right of title to qualified radiographers is in the public interest, but the case for the retention of right of title for radiographers is not a strong or overriding one; and
- in the current context of registration carrying with it the right to title, restricted right of practice is also in the public interest – however, if registration were to continue

- any person should be permitted to perform a radiographic procedure that he or she is trained to do
- locations associated with permitted procedures should not be restricted unless use in particular types of locations are shown to give rise to a high risk of serious damage
- any profession or person with training to refer and interpret certain types of radiographic images (such as dentists, chiropractors, physiotherapists and podiatrists) should be permitted directly to refer a patient to a radiographer.

The overall benefits of regulating radiography procedures are assessed to exceed the overall costs. However, in chapter 7 it is concluded that there is an alternative means of achieving the same result as the current registration system, though in a wider and more consistent framework for the regulation of all irradiation technology. This is not a *nonlegislative* approach, but rather a *different* legislative approach through the *Radiation (Safety Control) Act 1978*.

In response to the guideline given to the review that a strong net benefit for retention must be demonstrated if no change to existing restrictions is to be recommended, it is recommended that:

- the *Radiographers Act 1976* be repealed;
- radiographers no longer be a registered profession in the Northern Territory;
- the current practising certificate and permit powers of the Radiographers Registration Board be transferred to the licensing powers of the Chief Health Inspector under the *Radiation (Safety Control) Act*;
- the current inspectorial powers of the Radiographers Registration Board be transferred to inspectorial powers of the Chief Health Inspector under the *Radiation (Safety Control) Act 1978*; and
- any specific criteria that are deemed to be necessary for the licensing of operators of ionising radiographic equipment be incorporated into subsidiary legislation under the *Radiation (Safety Control) Act 1978*.

1

Introduction

THE CENTRE FOR INTERNATIONAL ECONOMICS (CIE), a private economic research consultancy, in conjunction with Desliens Business Consultants was commissioned by Territory Health Services to undertake an independent review of the *Radiographers Act 1976* in accordance with the principles for legislation reviews set out in the Competition Principles Agreement (CPA) entered into by all members (Commonwealth, states and territories) of the Council of Australian Governments in 1995.

The review forms part of the Northern Territory government's obligation under the CPA to review and, where appropriate, reform all laws that restrict competition by the year 2000. Legislative reviews along National Competition Policy (NCP) lines are currently being undertaken of health and health related acts in other states. The Commonwealth is also conducting NCP reviews of its health legislation.

The *Radiographers Act* is one of 12 Northern Territory health acts being reviewed (box 1.1).

In undertaking this review we sought submissions from interested parties. An issues paper was circulated to facilitate the preparation of submissions. Consultations were held with stakeholders both prior to the preparation of the issues paper and also following the receipt of submissions.

Submissions were received from the Director of the Professional Boards in conjunction with the Chair of the Radiographers Registration Board (it being made clear that not all board members subscribed to that submission); Mr Roger Weckert, Chief Radiographer at the Royal Darwin Hospital; the Radiographers of Central Australia; Mr Mark DiFrancesco, Clinical Nurse Specialist, TB/Leprosy Control, Centre for Disease Control; and Territory Health Services (THS).

1.1 Acts to be reviewed

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

2

The Radiographers Act and its operating environment

THE *RADIOGRAPHERS ACT* was initially legislated in 1976, and the Radiographers Registration Board, which is established under the act, has operated since mid-1977. The act was based on Tasmanian legislation. For many years Tasmania and the Northern Territory were the only jurisdictions regulating the activities of radiographers.

However, in 1993 the Australian Health Ministers Advisory Council recommended that the practise of radiography in Australia be regulated and the dispensation of radiation be limited to qualified professionals. Since then, Victoria has introduced registration of radiographers. In New South Wales, Queensland and South Australia radiographers must be licensed. In Western Australia and the ACT there is no registration or licensing requirement, though in WA there is a restriction that any person undertaking a radiographic procedure must be eligible to be a member of the Australian Institute of Radiographers.

In most jurisdictions a single radiation protection authority issues licences to use irradiating (including x-ray) apparatus. However, in general, licensing requirements do not cover ultrasound apparatus. In the Northern Territory this function is administered through its Chief Health Officer.

The *Radiographers Act* establishes the Radiographers Registration Board and provides for that board to administer the registration of radiographers in the Territory. The board consists of five persons, being:

- the Chief Health Officer or his nominee (chair);
- a person employed by the Northern Territory as a Senior Specialist-in-Charge specialising as a medical practitioner in radiology;
- two registered radiographers, each having at least three years post-graduate experience of radiography; and
- one other member appointed by the Minister.

The purpose of the board is to administer the registration requirements in the act and they may inspect radiographic equipment used and records of radiographic procedures undertaken. Registration requirements include the registration, cancellation of registration and restoration of registration of radiographers, and the maintenance of a public register of radiographers. The board is required to register any person, deemed to be 'fit and proper', who satisfies the board of his or her qualification as a radiographer.

This qualification is currently eligibility for membership of the Australian Institute of Radiography, but provision is made for persons who, prior to 1988, qualified for a diploma issued jointly by a board of two professional radiology-radiography bodies. There is also provision for the recognition of appropriate overseas qualifications. The Australian Institute of Radiography accredits all radiographers in Australia and all courses of training leading to a radiography qualification. There are currently seven fully accredited three year university degree courses. With this degree, followed by twelve months of supervised clinical practise, a person can receive an accreditation certificate from the institute. An eighth degree course, which will involve a four year degree and may incorporate the clinical experience requirement, has currently been partially accredited by the institute. The institute also accredits overseas qualifications.

Presentation of an institute certificate of accreditation is taken by the board as evidence of qualification for registration. Since there is a national accreditation mechanism (and has been since 1957), mutual recognition from within Australia is not an issue. However, there is mutual recognition between Australia and New Zealand.

In order to practise, a registered radiographer is required to hold a current practising certificate issued by the registrar of the board. Certificates are issued for a twelve month period to any registered radiographer who applies. The act precludes any person other than a registered radiographer representing him or herself as a radiographer. It also precludes any person from carrying out a radiographic procedure unless he/she is a registered radiographer holding a current practising certificate. (A person in training is exempted so long as the procedure is undertaken under the direction of a medical practitioner and is supervised by a registered radiographer holding a current practising certificate.) A 'radiographic procedure' is defined in the act as:

...a procedure in which ionizing or ultrasonic radiations are used for the purpose of:

- a) investigating the state of a part of the body of a human being; or

- b) treating a condition of such part'.

Notwithstanding procedures using ultrasonic radiations being included in this definition, operators of ultrasonic procedures have not been regulated under the act. It is understood that ultrasonic procedures were relatively new and practised by radiographers at the time the act was introduced (1977). Even then, physiotherapists acting under the direction of a registered medical practitioner were permitted to use ultrasonic equipment for therapeutic treatments (section 19(2)). In consultations held after the release of the issues paper it was said that diagnostic use of ultrasound is generally not a risk to health, some therapeutic uses can be dangerous, while there have been developments in other radiation techniques (multi-resonance imaging) since the legislation was enacted.

Currently 66 radiographers are registered in the Northern Territory, 47 of whom hold a practising certificate. A fee of \$25 is charged for full registration and \$10 for provisional registration. A fee of \$10 is charged for a practising certificate. These fees cover only a small part of the operating costs of the board.

Notwithstanding the general requirement that to undertake a radiographic procedure a person must be a registered radiographer holding a current practising certificate, the board can issue permits for persons to carry out specified radiographic procedures. These can be subject to specified conditions and may require evidence of training or examination. The policy of the boards has been to restrict permits to medical practitioners, dentists and chiropractors, who are professionals who the board considers have received training to refer patients for limited x-ray procedures. Strictly speaking, the board should also issue permits to radiologists, but it is understood that this is not done. Permits are specific to particular procedures. For example, chiropractors are permitted to x-ray spines and dentists to x-ray teeth. Each permit is also restricted to a particular location.

The act allows for regulations to be made, but there are no current regulations subsidiary to the act. However, certain matters are regulated directly within the act. Radiographers are only permitted to carry out a radiographic procedure at the direction of a registered medical practitioner. They are required to keep a record of all persons exposed to radiography, which can be inspected by the board at any time. And it is an offence for radiographers to carry out a procedure using equipment considered by the board to be unsafe. The Territory's *Radiation (Safety Control) Act* also regulates procedures involving 'irradiating apparatus', but persons lawfully using such apparatus in accordance with the *Radiographers Act* are explicitly exempt from those controls.

Nothing in the act restricts registered radiographers from being self-employed in private practice. However, it is understood that all currently practising radiographers are employed either by THS or by radiologists. THS has contracted all its radiology work to two Adelaide based firms of radiologists. Although their radiologists travel from Adelaide, they employ radiographers in the Northern Territory.

3

NCP principles

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

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

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

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

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

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

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

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

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

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

In this context, it is important to bear in mind that suppliers encompass a wide range of activities. A particular objective for introducing NCP was to extend competition laws to unincorporated businesses and government services. So suppliers in the context of reviews of health legislation encompass the professions as well as government agencies.

It is also important to bear in mind that NCP is not based on a view that fewer rules and restrictions are necessarily better. Competition itself cannot operate outside a framework of trust which is underpinned by general commercial, industrial, health and safety, and environmental laws. Many features of these laws themselves restrict actions that are deemed to undermine the operations of an efficient competitive economy.

4

The objectives of the legislation

THE FIRST TASK OF ANY NCP REVIEW is to clarify the objectives of the legislation. In the case of the *Radiographers Act*, no statement of objectives is contained within the act other than it being described as ‘an act to provide for the registration of radiographers and the control of the practise of radiography, and for related purposes’.

The second reading speech at the time the act was introduced in 1976 made no reference to the objectives sought through the registration of radiographers. However, in regard to radiographic procedures the then Minister said that the ‘bill provides an effective means of exercising control over the use of procedures which, although they are of immeasurable benefit, can also be dangerous when not used with care by trained persons’. Also, when introducing amendments to the act in 1982, the then Minister said that the ‘*Radiographers Act*, which was commenced in 1977, was designed to protect the public by requiring an adequate level of skill and training before any person was permitted to subject other individuals to x-ray procedures of any kind’.

These statements appear to encapsulate what the substance of the act and its subsequent administration has been about. The objectives against which the performance of the act are to be evaluated, or their contemporary relevance judged, are therefore taken to be:

- to protect the public by requiring an adequate level of skill and training before any person is permitted to subject other individuals to x-ray procedures; and
- to exercise control over the use of procedures which, although they are of immeasurable benefit, can also be dangerous when not used with care by trained persons.

In response to the issues paper prepared for this review, the Radiographers of Central Australia’s submission proposed that the objectives of any new legislation should be stated. They considered the two objectives stated above to be appropriate. Mr Roger Weckert, chief radiographer at the Royal

Darwin Hospital, also considered that the objectives of the legislation should be stated. He considered that these should be:

...to protect the public by requiring an adequate level of skill before any person is permitted to subject other individuals to x-ray procedures of any kind.

5

The nature and effects of restrictions on competition

HAVING SOUGHT TO CLARIFY THE OBJECTIVES of the legislation, the next two tasks for an NCP review are to:

- identify the nature of any restrictions on competition that operate as a result of the act or the procedures adopted under the act; and
- analyse their effects on competition and on the economy generally.

Although these are identified in the legislative review procedures as separate steps, for legislation such as the *Radiographers Act*, which is not commercial in its orientation, it is considered preferable to handle them together.

The Competition Principles Agreement, which underpins the NCP legislative review program, does not define what constitutes a restriction on competition. However, the National Competition Council has suggested seven ways in which legislation might limit competition (NCC, *Legislation Review Compendium*, April 1997, p. 4). According to the NCC, an act could restrict competition if it:

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

The review is required to identify the *nature* of restrictions in the act which limit competition. Some of these may be more *potential* than *real*. For example, registration potentially limits entry to markets for professions.

But if it is used to require certain standards for service suppliers and information for service users, and is not used to limit the numbers of service providers or unduly raise their costs, it need not have any actual impact on market entry.

The actual impact of each potential restriction on competition needs to be assessed prior to any evaluation of the balance between their costs and benefits to the community. This said, the act contains a number of provisions that need to be examined against the matters considered by the NCC potentially to restrict competition.

Restrictions on entry

Part III of the act requires the Radiographers Registration Board to register persons deemed qualified to practise radiography by the Australian Institute of Radiographers and to issue annual practising certificates, provided that those persons are deemed by the board to be 'fit and proper' and they pay the required fees. Each of these requirements, in principle, restricts entry to the profession and hence weakens competition. In practice, however, the levels of fees (\$25 for full registration and \$10 for provisional registration and renewals) are too small to warrant further consideration in this regard.

What constitutes a 'fit and proper person' is not defined in the act. It presumably allows the board to exclude a person with a criminal or medical record deemed to jeopardise professional conduct from being registered even if he or she has the necessary qualification. Grounds for suspension or cancellation of registration are spelled out in the act and include, in addition to committing breaches under the act, failure to comply with ethical standards acceptable to the profession, habitual personal use of drugs, mental disorder, or 'an offence of such a nature that it is undesirable, in the public interest, for him to continue to practise radiography'.

Although it is conceivable that the 'fit and proper person' and de-registration criteria could be used to limit entry for anticompetitive rather than professional integrity reasons, the likelihood of this occurring is considered negligible. Appeal procedures to the courts, contained in the act, appear to be adequate safeguards in this respect.

The only two submissions that addressed the 'fit and proper person' requirements both considered that it should remain, though Mr Roger Weckert proposed that criteria be spelled out.

The most significant potential restriction on entry to the profession is probably the fact that the profession itself establishes the qualifications, not simply to use the title of 'radiographer', but also to practise radiography. Of course, it is not unreasonable for the community to require assurance that services are being provided safely and there is continuing improvement in the effectiveness of their delivery. Governments too, as funders of many health care services, need assurance that individuals and organisations that provide services on their behalf are both effective and efficient. Professional and service organisation standards are of core importance in health care legislation.

A concern about standards in an NCP legislative review is therefore not to question the need for them as such. They might merely form the framework of rules within which firms and people can compete on equal terms. However, it is necessary to ensure that any standards established or underwritten by legislation do not needlessly restrict competition. They could restrict competition if they introduce inflexibilities that stifle innovation in service provision or exclude service providers who could effectively service specified needs safely and effectively at low cost.

In this latter regard the *Radiographers Act* does permit persons other than registered radiographers to carry out specific radiographic procedures under certain conditions. This does reduce the likelihood of one possible avenue of registration limiting market entry. However, the review team understands that while the board issues permits to suitably qualified registered medical practitioners, dentists and chiropractors, it has not issued permits to other categories of health professionals for x-ray procedures for which they have received a qualification which is acceptable in some other Australian jurisdictions.

A submission from Mr Mark DiFrancesco, a clinical nurse specialist in TB/leprosy control at the Northern Territory's Centre for Disease Control, provided information about the considerable costs that the refusal to grant permits to registered nurses who hold qualifications to take x-rays in remote areas in South Australia and Queensland impose on THS. However, in consultations held following the release of the issues paper it was established that under mutual recognition obligations a permit with equivalent limitations would be issued by the board to any such qualified person.

Another potentially related matter was raised in consultations following release of the issues paper. It was suggested that although there is a requirement to employ a registered radiographer to undertake breast screening services, these could be performed safely and adequately by a suitably

qualified non-radiographer. A provision of the award under which radiographers work in the Northern Territory is that their ordinary hours of duty shall not, on any day in which they work which exposes them to continuous irradiation, exceed two hours. Thus, the limitation of registration, combined with the award, imposes inflexibilities and costs on the screening services.

Also, as noted under a following heading, the policy of the board that such permits be specified to permit the procedures to be carried out only in particular locations appears potentially to be anticompetitive.

Restrictions on prices and production

Nothing in the act directly controls prices which radiographers can charge for their services. Some features of the act may control the production of radiographic services, but these are best dealt with under the following heading.

Restrictions on quality, level or location of services

Features of the act potentially impose restrictions of all three of these types on the provisions of radiographic services. The right of an inspector from the board to enter premises and examine equipment used, results of procedures carried out, and records of persons exposed to radiography potentially restrict the quality of services provided. Although this is a means of fulfilling the inferred objective of the act to 'exercise control over the use of procedures which, although they are of immeasurable benefit, can also be dangerous when not used with care by trained persons', the possibility that it could limit innovation or introduce inflexibilities needs to be raised.

The level of the services radiographers can provide is limited to the extent that their procedures must be carried out at the direction of a registered medical practitioner. Whereas this might limit the size of the total demand for radiographic services, in principle it does not restrict the ability of radiographers to compete among themselves to satisfy any given level of demand. It could only do so in practice if there were relationships of a commercial nature (either explicit or implicit) between medical practitioners and radiographers.

However, the requirement is ambiguous and could lead to confusion. In consultations following the release of the issues paper it was claimed that radiographers are involved in the breast screening program where they do

not work under the direction of a medical practitioner, not where there are referrals. People simply present themselves to the service where they are x-rayed. Furthermore, the Radiographers of Central Australia claim that the word 'direction' does not reflect what usually transpires between the referring medical practitioner and radiographer. Quite often an amount of communication is required to ascertain the suitable examination for the desired results of the referrer. 'Request' was proposed as a word that better reflects current practise.

The Radiographers of Central Australia also consider that the wording of the requirement is anticompetitive to the extent that it reduces the referral base. Referrals should be legally possible from dentists, chiropractors, physiotherapists and podiatrists directly, and not necessarily only through a medical practitioner.

In consultations following release of the issues paper it was also claimed that there has been some inconsistency in the status of referrals made by registered nurses for x-rays. Some radiographers have refused to undertake x-rays procedures on referral by a registered nurse in anticipation of a need by a registered medical practitioner, even though the nurse has experience in the requirements of the medical practitioner concerned. This was claimed to lead to needless delays in diagnosis and treatment, or to a charade of signed referrals by the medical practitioner with details to be filled in by the nurse.

The act does not directly place limits on the locations in which radiographers can carry out their procedures. However, permits issued by the board to persons other than registered radiographers do limit the locations where permitted procedures can be carried out. This restriction is not a direct requirement of the act, but rather a policy of the board. It is potentially anticompetitive, since the board has separate powers to ensure that equipment used in particular locations is safe.

Both the Radiographers of Central Australia and Mr Weckert claimed that there is a well documented rationale for this restriction. Mr Weckert said that to allow a person to set up at any site and then forget about the hazard of scatter radiation is certainly not in the best interest of the community. If there were no restriction it would be counterproductive to those practices that have had the additional expense of lead lining the wall of their x-ray rooms.

However, it is understood that the board does issue permits to some remote area operators in the Northern Territory, providing an avenue for the provision of radiographic services to areas where it is cost prohibitive to employ a registered radiographer. The board specifies the level of

training that must be undertaken and limits permits to most appropriate procedures for the area.

Restrictions on advertising and promotion

Unlike some of the acts regulating professional health activities in the Territory, the *Radiographers Act* does not place any restrictions on advertising or promotional activities. However, the act does limit the use of the title 'radiographer' to persons registered under the act. Other persons are not permitted to represent themselves in any ways as being radiographers or doing things from which it can reasonably be inferred that they are acting as radiographers.

These features are a means of fulfilling the objective of the act 'to protect the public by requiring an adequate level of skill and training before any person is permitted to subject other individuals to x-ray procedures'. However, they might also limit promotional opportunities. This said, limits on the use of terminology appear more to be of the nature of trade description information, which gives comfort to consumers that services are provided to a standard sought. In this sense they could be viewed as 'pro-competitive' rather than 'anticompetitive'.

Other potential restrictions

The only potential restriction on competition through limits on the type of input used is the offence to carry out a radiographic procedure by using equipment that in the opinion of the board is unsafe. The board's inspectors have the right to examine equipment in this regard. The only cost impost on radiographers or permit holders under the act, apart from the negligible registration and permit fees, is the requirement to keep records, which can be inspected at any time, of each person exposed to radiography. These both appear to be directly related to user protection and to have minimal potential anticompetitive impact. For these reasons they do not warrant further consideration as impediments to competition.

Nothing in the act appears to provide advantage to some types of firm or classes of operator (apart from the distinction between registered radiographer and permit holder already discussed) over others – for example, between the public and private sectors.

6

The balance between costs and benefits of each restriction

THE FOURTH REQUIREMENT OF THE NCP review process is to assess the balance between the costs and benefits of any potential restrictions on competition. That is, there is a requirement to consider whether restrictions on competition are in the public interest. The guiding principle of NCP requires the onus of proof in this regard to be with those who argue for the maintenance of any restrictions.

The case for restrictions on competition being in the public interest (that is, their social benefits exceed their social costs) is usually made on grounds of 'market failure' in an unrestricted market. Some of these arguments do not appear to be of any relevance in the case of the *Radiographers Act*. For example, one traditional 'market failure' argument for restrictions is to ensure that those who benefit from an activity pay for it. Nothing in the act is oriented in this way.

However, one traditional 'market failure' argument, that information available to one group is not available to others with whom they do business (information asymmetry) is of relevance in the evaluation of the public interest of any potentially anticompetitive features of the *Radiographers Act*. A basic premise of an efficient competitive market is that people are capable of making informed choices. A major argument for restrictive provisions in many health related acts is that users of health care services do not have sufficient information to be able to make informed choices. Not only can this lead to unsatisfactory 'market driven' outcomes for individuals, but there is a contingent liability on the community in cases where treatment is not of an appropriate standard.

Information asymmetry is a key consideration behind most anticompetitive restrictions in health care legislation. The registration and limits on the use of the term 'radiographer' can be viewed as providing valuable information to users on the capabilities of the service provider. The limits on service quality, levels and locations of service might be viewed as providing assurance to users that the radiographic procedures purchased will be

carried out professionally, minimising the risk of radiation damage. Requirements to keep records and make results of procedures available to inspectors also give comfort to government administrators that social risks are minimised.

Costs of the potential restrictions on competition

The social costs of restrictions on radiographic service delivery could be of three types:

- administrative, enforcement and compliance costs;
- efficiency losses caused by appropriate services not being provided or such services as are provided not being supplied at least cost; and
- restrictions on choice by users.

Unlike the situation in most other Australian jurisdictions, professional regulation in the Northern Territory is not self-funding. Annual fees charged do not cover the costs of the board's administrative and enforcement activities. A recent review of the Northern Territory's professional registration boards estimated that the Northern Territory government contributes some \$350 000 per year to their administration.

Some restrictions also potentially result in efficiency losses through the ways in which services are provided to users. Consider, for example, limits placed on radiographic procedures undertaken by professionals who are not registered radiographers. A medical practitioner who has a permit only for chest and extremity work x-rays would not be permitted to x-ray the spine of a patient who complains of a back problem, even if he or she has received training to safely undertake spinal x-rays.

These and other restrictions can limit choice by users and add to their costs. Although registration fees in the first instance are borne by the professionals, a significant component of them is likely to be passed on to users of services. This is also likely to be the case with compliance costs. And although the benefits of restrictions of types of procedures undertaken by permit holders and where they can be carried out need to be assessed, they undoubtedly add to users' costs.

Benefits of the potential restrictions on competition

The benefits of any legislated restrictions on competition in the activities of the Northern Territory's radiographers and the delivery of radiographic

services need to be assessed with regard to the objectives of the *Radiographers Act*. Thus, to protect the public by requiring an adequate level of skill and training before any person is permitted to subject other individuals to x-ray procedures, and to exercise control over the use of radiographic procedures that can be dangerous when not used with care by trained persons, are the benchmarks against which the benefits of outcomes actually achieved by the restrictions should be assessed.

In addition, the overriding objective of NCP itself, which is to encourage efficiency by means of a more competitive economy, must be considered, as should the public interest issues nominated in the Competition Principles Agreement – namely, the environment, employment, regional effects, consumer interests as well as the competitiveness of business. The links between radiographic procedures and general health and environmental safety are strong. In this regard benefits flowing from other legislation, such as the *Radiation (Safety Control) Act*, may also need to be considered.

Balance between costs and benefits

The following assessment of the balance between costs and benefits of potential restrictions on competition groups those restrictions identified in the preceding chapter into three groups: those which impose requirements for registration and licensing; those which restrict use of title to those who hold registration; and those which restrict practises which can be carried out by registered radiographers and by others who are not registered. The only other feature of the act identified which might restrict competition in other ways is the requirement to pay fees for registration and annual practising certificates, but the levels of these are considered to be so small in relation to the costs of the board as not to warrant further consideration. Indeed, there could be a strong case, in view of benefits of registration to the profession itself, for the levels of fees to be raised.

The discussion first lists potential benefits and then potential costs, both in dot point form. Then a general conclusion is drawn about the net public benefit or cost of those restrictions, usually as a group.

Requirements for registration and licensing

Two potential restrictions on competition arising from requirements for registration were identified in the preceding chapter. These are the requirement that an applicant must satisfy the board that he or she is a ‘fit and proper person’ to be registered and that, because the professional qualifi-

cation for registration is eligibility for membership of the Australian Institute of Radiography, it is the profession itself which ultimately limits the rights to practise as a radiologist.

The act does not specify any criteria through which the board is to determine that an applicant is not 'fit and proper' for purposes of registration, but there is probably sufficient case law in this regard to guide it. Indeed, the appeals process outlined in the act suggest that case law would be the final arbiter. Furthermore, grounds for suspension or cancellation of registration spelled out in the act include failure to comply with ethical standards acceptable to the profession, habitual use of drugs, mental disorder, or 'an offence of such a nature that it is undesirable, in the public interest, for him to continue to practise radiography'. There is no requirement in the act for a registrant to inform the board of any changes that might affect his or her status as a fit and proper person.

The Australian Institute of Radiography accredits all radiographers in Australia and all courses of training leading to a radiography qualification. Therefore, it is the profession itself, rather than an independent evaluation body, that ultimately determines who can or cannot be registered in terms of professional criteria. Since there is a national accreditation scheme, mutual recognition from within Australia does not resolve this potential restriction. However, the national base of qualified radiographers does mean that numbers available for employment in the Northern Territory are unlikely to be significantly limited because of it. There is also an avenue for people with appropriate overseas training to become registered radiographers.

Although these are potential restrictions, it must also be noted that, unlike the situations of some other registration boards, the Radiographers Registration Board is not constituted with a majority of its members being drawn from within the profession itself.

Benefits

- The 'fit and proper person' requirement protects the community from professionals of known or demonstrated incapacity or bad reputation.
- It also protects the profession from costs imposed on it from unprofessional activities of its own potential members.
- Professionals are best placed to judge what are the appropriate requirements for membership of their own professions.

- National accreditation of radiographers ensures non-discrimination between jurisdictions within Australia (either for or against the Northern Territory) in the supply of qualified radiographers.

Costs

- There is a potential for criteria such as ‘fit and proper person’ and ‘unprofessional conduct’ to be used inequitably if their intent is not clarified in the legislation.
- There is a possibility of higher costs of protecting consumers through these provisions than through the alternative complaints mechanisms of the Northern Territory’s Commissioner for Health and Community Services Complaints or its *Consumer Affairs and Fair Trading Act*, or through the consumer protection provisions of the Commonwealth’s *Trade Practices Act*. However, redundancies implicit in all these routes might increase consumer protection costs.
- Professional associations are not subject to NCP disciplines, and the profession’s own requirements for registration or changes to them could be used to restrict numbers entering the profession or to favour certain types of training institutions. The incentive to do this is greater for a profession like radiography whose registration restricts rights to practise certain procedures.
- Offsetting the benefits of national accreditation, the Territory’s Radiographers Registration Board is unable to exercise independent control over registration standards. However, because of national accreditation, any reductions in numbers coming into the profession are more likely to be a national cost than a discriminatory cost against or within the Northern Territory.
- There are no explicit requirements to demonstrate continuing and contemporary professional competency.

Assessment of balance

Fit and proper person

Provided there are safeguards against ‘fit and proper person’ requirement being used anticompetitively or inequitably, its benefits are likely to exceed its costs. There is no evidence that the existing requirement has been used anticompetitively or inequitably.

Nor is there evidence of excessive redundancy costs in alternative routes for lodging consumer complaints. The appeals provisions in the act appear

to be sufficiently independent to minimise the likelihood of the board excluding professionals on anticompetitive or other discriminatory grounds that are not in the public interest.

This said, confidence about a net public benefit from continuing with a ‘fit and proper person’ restriction is likely to remain questionable for as long as it remains vague in the public mind. Some of the other Northern Territory registration boards have also proposed that any future legislation should include a ‘fitness to practise’ requirement which would include:

- adequate physical and mental health;
- absence of relevant convictions for indictable offences, statutory offences relating to the professional’s practise, and findings of guilt in either civil or disciplinary proceedings in any jurisdiction; and
- absence of relevant current criminal or disciplinary investigations in a jurisdiction outside of the Northern Territory.

These words appear to be sufficiently clear to preclude any anticompetitive or otherwise inequitable treatment criteria being used under a fitness to practise requirement, and hence would enhance public confidence. The mandatory reporting of any change in status on these matters, with power by the board to act on that information, would also underpin their effectiveness.

Professional qualifications

If registration did not carry with it any exclusive rights to provide particular types of services, the benefits of the profession determining its own professional requirements for registration would be likely to exceed its costs. However, to the extent that rights to practise are restricted to those who are registered, there could be an incentive to use registration to reduce numbers in practice and thus increase their remuneration. If that were to happen, the costs of the profession determining its own qualification requirements for registration could exceed the benefits. For this reason, a net public benefit could only be assured if the board is required to follow certain guidelines.

While these guidelines should not break down the concept of national accreditation, it would be desirable to build into the statutory requirements the completion of an approved course of studies backed up by an appropriate period of supervised clinical practise. Whereas this might appear redundant in view of current requirements of the Australian Institute of Radiographers, it would establish a criterion in the act that is external to the profession itself. The board should also be required to

ensure that any changes in professional association requirements do not exclude those currently eligible from acquiring or retaining registration, though such persons may be required to give evidence of actions taken to keep abreast of and develop their professional skills. Indeed, there should be an expectation of continuing and contemporary competence to be demonstrated in order to obtain a practising licence and thereby retain registration.

Conclusion

It can be concluded that, if the registration system is to remain, there is a net public benefit from retention of a 'fit and proper person' requirement, but that any new legislation should:

- clarify the intent of the criteria to be used;
- contain a mandatory requirement to inform the board of any changes of status in these regards; and
- empower the board to suspend or cancel registration on the basis of such information, subject to normal appeal procedures.

Any conclusion about there being a net public benefit from continuing with the principle of the profession determining its own qualification requirements needs to be more heavily qualified. If registration is to continue with restrictions on rights to practise:

- statutory requirements for registration should explicitly include the completion of an approved course of studies backed up by an appropriate period of supervised clinical practise;
- if eligibility of membership of the Australian Institute of Radiography is to remain a criterion for registration, any changes in those eligibility criteria should not automatically exclude those formerly eligible for acquiring or retaining registration, though such persons may be required to give evidence of actions taken to keep abreast of and develop their professional skills; and
- provision should be made in the act for the board to require a demonstration of continuing and contemporary competence in order to obtain a practising licence and thereby retain registration.

Restriction of the use of title

The act makes it an offence for people to take or use the title of radiographer, to represent themselves as a radiographer, or to do anything that infers that they are or are acting as a radiographer, unless they are

registered as a radiographer. Thus the act can be said to provide a 'right of title'.

Benefits

- Right of title provides information to potential users of radiographic procedures and employers of service providers, increases confidence about services providers, and reduces risks to patients that an inappropriate radiographic procedure will be provided.
- It gives a sense of professional identity and professional recognition to radiographers that might not be rewarded in other ways.
- Public health risks in the wider community are reduced, as are health care costs, which might be borne by government if patients and/or their principal health care providers inappropriately choose unqualified operators of radiographic procedures.
- To the extent that risks of professional liability are reduced, costs of professional indemnity cover may be reduced.
- To the extent that public health risks are reduced, the likelihood and costs of litigation are also reduced.
- Restriction on the use of title reduces the likelihood of the Northern Territory becoming the dumping ground for inappropriately qualified operators of radiographic procedures if most other jurisdictions continue to regulate radiography practise.

Costs

- All of the requirements for registration and licensing support right of title, so those costs apply.
- Apart from costs of restrictions on 'right of practice' (the subject of the following assessment), no other costs appear to be involved.

Assessment of balance

Registration that restricts use of title to those who hold recognised professional qualifications and satisfy other fitness to practise requirements is comparable to 'trade description' or 'trademark' registration that applies in other areas of commerce. Apart from any restrictions on rights to practise that might be imposed on those who are not registered, this lowers costs and risks to service users, employers of service providers and indemnifiers of professionals registered to use that title. In these regards it can be considered pro-competitive rather than anticompetitive.

Whereas it should be made clear that statutory restriction on use of title does not imply an endorsement by government of services provided through any particular registered profession or professional, there is also a potential for right of title restrictions to reduce risks and costs to government in the event of a service user inappropriately choosing an unqualified health care provider. In the case of radiography, there is also a reduced public health risk arising from uncontrolled x-radiation that might arise from procedures being undertaken by an unqualified provider. Therefore, provided the costs previously identified in relation to what is required to operate the registration system are modest and are borne by the beneficiaries, there appears to be a net public benefit from restricting use of title to those professionally qualified.

Conclusion

It can be concluded that the social benefits of registration, which conveys right of title to qualified radiographers, exceed the social costs.

Despite this conclusion, the case for the retention of right of title for radiographers is not a strong or overriding one. The social cost of lack of public information or the risk of misrepresentation in the absence of registration is not likely to be large. This is different from the case of, say, a psychologist or chiropractor who faces the public directly. Operators of radiographic procedures are likely to be sought by other health care workers who are the primary contacts with the public.

Restrictions on rights of practise

Subject to some specified exemptions and permits, the act makes it an offence for a person to carry out a radiographic procedure unless he/she is a registered radiographer holding a current practising certificate. Persons undergoing training in radiography are exempted when carrying out a procedure under approved supervision, as are physiotherapists who use ultrasonic equipment under the direction of a registered medical practitioner (procedures involving ultrasonic radiations being considered radiographic procedures under the act).

The board may also at its discretion issue permits to persons to carry out specified radiographic procedures. These can be subject to specified conditions and may require evidence of training or examination. Medical practitioners, dentists, chiropractors and osteopaths are persons to whom this currently applies.

There are also restrictions on practise by registered radiographers. The principal of these is that they are required to carry out each procedure under the direction of a registered medical practitioner.

Benefits

Most of the benefits of 'right of title' could flow through in an augmented way where there are restrictions on rights of practise. However, the particular benefits that need to be noted are:

- There is the likelihood that risks will be significantly reduced if there otherwise would be a high probability of serious damage to the patient.
- Contingent costs to government would be correspondingly reduced in the event of government services having to pick up responsibilities for outcomes from incompetent treatment.

Costs

- There is a social cost from wasted training if any person is prevented from practising what he or she is trained to do and holds a certificate of competency, if registration provisions exclude that person from practising.
- Restricted rights of practice can reduce competition and increase prices-costs – horizontally between professions where other registered or unregistered professions are excluded from providing certain procedures they are trained (or could readily be trained) to undertake, and vertically within professions where there are barriers against what para-professionals are permitted to do.
- Restrictions on rights to refer for practise can also increase costs by requiring all referrals to be made through the nominated profession.

Assessment of balance

The balance between benefits and costs of rights of practise has to be assessed in the context of comparative risks. Where there is a small risk that particular treatments or procedures normally undertaken by members of the profession will cause serious damage leading to long term disability to individuals or requiring remedial action at cost to government, the costs of restrictions on rights of practise are likely to exceed the benefits. Conversely, where the risk of these outcomes is large, the benefits are likely to exceed the costs.

Where the line should be drawn between these two sets of outcomes requires considerable judgement. For some professions, there may be a large number and range of treatments they normally undertake for which there are high probabilities of serious damage if undertaken by an unqualified practitioner. For these, a blanket prohibition of practice by any person other than one holding a registered qualification might be in the public interest. For others, most practises they undertake might have a very small probability of causing serious damage if undertaken by a different professional or even by a person with no professional qualification at all. Although there would be no public interest case for restricting rights of practice to members of such professions, it might still be in the public interest for them to be granted right of title.

Professionals should be able to practise what they are trained to do

But in many cases it is unlikely that such judgements can be made with any degree of confidence along the lines of professional divisions. In such cases the costs of excluding any professional from doing what he or she is professionally trained to do and who holds an appropriate certificate of qualification to do so would exceed the benefit. The permit arrangements of the *Radiographers Act* support that principle, and are therefore in the public interest. However, the costs of some features of the permit system may exceed their benefits.

Restriction of permits to classes of profession

The act places no restriction on the professional category of persons to whom it may grant a permit to carry out specified radiographic procedures. However, it is understood that thus far permits have only been issued to medical practitioners, dentists and chiropractors. It would appear to be in the public interest that permits be granted for a specific procedure to any person who can satisfy the board that he or she holds a qualification to undertake that procedure, irrespective of the primary qualification he or she holds.

Permit restrictions on locations

The board also limits the location at which any permit may be exercised. This is said to minimise the risks due to scatter x-radiation. Registered radiographers are said to be given more discretion because of their training to situations in which x-ray procedures can be safely practised. However, particularly in remote sites, and in view of safety standards required of equipment and the training that goes with special purpose radiographic procedures, the costs that this imposes are likely to exceed the benefits. A

principle that would best serve the public interest would appear to be that locations associated with permitted procedures should not be restricted unless the board determines that use in particular types of locations would give rise to a high risk of serious damage.

The requirement that radiographers work under the direction of a medical practitioner

The act requires registered radiographers to undertake their radiographic procedures at the direction of a registered medical practitioner. This appears to be interpreted by some radiographers as limiting the referral base to registered medical practitioners. This needlessly reduces the referral base, as other principal providers of treatment who require x-ray assessments are currently trained to refer and interpret certain types of x-ray images. The risk of serious damage resulting from such professionals directly referring to a registered radiologist appears to be small, and the costs of such a restriction on the referral base are likely to exceed the benefits.

The meaning of 'direction' therefore needs to be clarified, perhaps in the light of common law interpretations of the term. However, even if this is done it is questionable whether limiting such direction to medical practitioners, or the need for any direction of radiographers at all, is in the public interest. The principle that should drive professional practice, and responsibilities under the law, is that practitioners should be able to practise what they are trained and competent to do, and should refer or seek direction where responsibilities lie outside their competency. This principle should apply to radiographers and to any other category or health professional.

Exclusion of those not trained from right of practice

The caveats discussed above aside, the likelihood of unrestricted practise of radiographic procedures leading to serious damage to individual patients and to public health generally is considered to be significant. This leads to a conclusion that the benefits of regulating radiography procedures exceed the costs, and that right of practise in the current context of registration is in the public interest.

However, whether there are less regulatory ways of achieving net public benefits at lower social costs needs to be explored. Furthermore, in the light of the definition of a radiographic procedure in the current act, the absence of regulation of sonography even though the act encompasses it, and the development of other irradiation technologies since the legislation was

enacted, a wider framework may now be needed for the consideration of who should be able to practise and how practise should be regulated. This is the subject of the following chapter.

Conclusion

It can be concluded that in the current context of registration carrying with it the right to title, restricted right of practise is in the public interest. However, the following qualifications to current legislation and practise are noted:

- Any person should be permitted to perform a radiographic procedure that he/she is trained to do and who holds an appropriate certificate of qualification. The issue of permits should therefore not be restricted to any class of profession.
- Locations associated with permitted procedures should not be restricted unless the board determines that use in particular types of locations would give rise to a high risk of serious damage.
- Any profession which provides evidence to the board that its members are trained to refer and interpret certain types of radiographic images (such as dentists, chiropractors, physiotherapists and podiatrists) should be permitted directly to refer a patient to a radiographer. This principle should be extended to any individual who can provide such evidence for him or herself.
- Any health professional who is trained and/or otherwise suitably experienced should be permitted to refer for radiographic procedures falling within their competence for referral.
- Legislated restriction on radiographers to work under the direction of a registered medical practitioner should be removed.

7

Alternative means of achieving objectives

THE FINAL TASK IN AN NCP REVIEW is to consider whether there are alternative means of achieving the same result as those which restrict competition, including nonlegislative approaches. This issue must be addressed even if the restrictions are assessed to be in the net public benefit.

A key issue in this regard is the extent to which the requirements for registration and the constraints placed on others who have various types of training in radiographic procedures match the needs of principal health care providers and their patients who require radiographic imaging. High standards generally result in high quality. But if those standards are not necessary to carry out the functions at the level of quality desired by users or if persons with adequate standards and training are prevented from carrying out these services, high costs and inflexibilities may result. This said, it is recognised that, because of the permit system, there is greater scope in the *Radiographers Act* for these higher costs and inflexibilities to be avoided than there is in some other legislation regulating the health professions in the Northern Territory.

There are a range of alternative, perhaps less costly, mechanisms that might be considered to achieve the control over procedures and user protection objectives of the act. These include:

- providing enhanced information to consumers, including official warnings, advertising campaigns and publication of pamphlets about specific professional and occupational services;
- listing or certification schemes which require practitioners to inform a central authority about educational qualifications and previous experience in the industry as a substitute for the specification of allowable practices; and
- so-called 'negative registration' where service providers are not screened before starting practice, but are prohibited from practising if shortcomings in their operations are identified.

These alternatives have traditionally been rejected in the case of most professionals providing health services. In its submission, the Radiographers of Central Australia characterised the concept of 'negative registration' as 'completely abhorrent!' They claimed that to even contemplate allowing anybody to practise and then to prohibit them when they are found to be of unacceptable standard is so against the principle of providing safe service as to be ridiculous.

It can be concluded from the preceding chapter that the overall benefits of regulating radiography procedures exceed the overall costs. This is the position that has been adopted by all Australian jurisdictions with the possible exception of the ACT. As outlined in chapter 2, two basic models have been adopted in this regard. In New South Wales and South Australia radiographers are regulated through a licensing system that operates through an act that regulates radiation safety generally comparable with the Northern Territory's *Radiation (Safety Control) Act*.

In Tasmania and Victoria, as in the Northern Territory, regulation is through a registration control board. Western Australia is developing a system that requires anyone operating ionising radiographic equipment to be accredited by the Australian Institute of Radiographers and to be under the direction of a registered medical practitioner. Queensland currently requires licensing of radiographers and has agreed to continue with their regulation, but the mechanism has not yet been resolved.

The submission from the Director of the Professional Boards and the Chair of the Board argued that it would be far more effective and efficient in the Northern Territory to license radiographers and to issue permits for other persons under the *Radiation (Safety Control) Act 1978* than to continue the current registration system. Similar views were expressed in the submission from THS. (The director and chair's submission did point out that some board members are not of this view and believe that the current form should continue.)

The licensing of radiographic equipment and nuclear technicians is currently undertaken by Territory Health Services through the provisions of the *Radiation (Safety Control) Act*. The two submissions mentioned above argue that it would be far more effective and efficient to license radiographers and to issue permits to other persons under provisions of this act. They also consider that such a move would not be anticompetitive, since the licensing would be clearly related to public safety, as is the current licensing arrangements for ionising radiation machinery and nuclear technicians. It would ensure a coordinated approach to the whole issue of

radiation safety in the community and assist in minimising the cost to the community for ensuring this safety.

A move of this nature would transfer the regulation of radiography away from a board with considerable professional representation into a system controlled from within THS itself. Administration under the *Radiation (Safety Control) Act* is through the Chief Health Officer, subject to direction and control of the Minister. The Chief Health Officer delegates his powers under the act to inspectors who have powers to enter premises and check equipment, and examine licences of operators and records of procedures. Similar powers exist under the *Radiographers Act*. All persons who handle or use radioactive substances or irradiation equipment must, under the *Radiation (Safety Control) Act*, be licensed by the Chief Health Officer to do so. The current system of regulation under the *Radiographers Act* is an explicit exemption from these requirements.

Thus, there is no doubt that radiography and radiographers could be regulated for public safety objectives through provisions of the *Radiation (Safety Control) Act*. Regulations could be made under the *Radiation (Safety Control) Act* to handle any radiography specific issue that the Chief Health Officer would have to take into account when licensing radiographers or radiographic equipment. The advantages of making such a change would be a wider and more consistent framework for the regulation of all irradiation technology, and a reduction of costs of the current board system.

Whether there are significant advantages in a more consistent framework for the regulation of all irradiation technology has not been established in this review. In principle it is a desirable direction in which to move. The director and chair suggest that the current system is wasteful. They claim that the Radiographers Registration Board is essentially a benign institution. Over the last 13 years it has not dealt with a single consumer complaint or dealt with any other issue than the registration of radiographers and issuing of permits.

The disadvantages of making this change would be that there is no provision in the current act for involvement of the profession in establishing standards for licensing, for restricting use of title, or for appeals against rejection of a licensing application or suspension or cancellation of license. If the change were made, it would appear to be appropriate to establish a formal consultative process with the professions to ensure that licensees have appropriate training for what they are licensed to do. It is noted that Western Australia, which has no requirement for registration or for licensing with any regulatory body, still has a requirement that any person

who operates ionising radiographic equipment must be accredited by the Australian Institute of Radiographers.

Although it was concluded in the preceding chapter that restricted right of title is in the public interest, it was also concluded that the case for its retention for radiographers is not a strong or overriding one. While radiographers are required to be licensed, and a condition of license is demonstration of appropriate qualification, the social cost of lack of public information or the risk of misrepresentation is not likely to be large. This is different from the case, say, of a psychologist or chiropractor who faces the public directly. Operators of radiographic procedures are likely to be sought by other health care workers who are the primary contacts with the public, though it is recognised that radiographers may be the first point of contact with users in certain screening services.

Whereas the current act has the advantage of explicit appeal procedures in the case of applications for licensing being rejected or licences being suspended or cancelled, general administrative appeals procedures now appear to be sufficiently well developed to ensure that administrators would need to bear natural justice criteria in mind in making their decisions and that natural justice would not be denied dissatisfied applicants or licensees. The potential need for appeals mechanisms might, however, suggest the need for criteria for licensing to be formalised within the *Radiation (Safety Control)* legislation.

In the absence of the board, there would still be an avenue for an independent body to receive, hear and resolve complaints by the general public against the quality of radiography service through the Commissioner for Health and Community Services Complaints.

Conclusion

There is an alternative means of achieving the same result as the current registration system, though in a wider and more consistent framework for the regulation of all irradiation technology. This is not a nonlegislative approach, but rather a different legislative approach which makes use of more general legislation currently available.

In coming to this conclusion, no consideration has been taken of compliance of the *Radiation (Safety Control) Act* with NCP principles. It is understood that equivalent legislation in all Australian jurisdictions is to be reviewed nationally in the near future. This would be the ideal forum also to address some other matters raised in the preceding chapter, such as the categories of radiation which should be regulated under the act.

8

Recommendations

THE FINAL TASK FOR THIS REVIEW is to make clear recommendations which flow from the forgoing analysis. A requirement of the terms of reference is that if change is not recommended and restrictions on competition are to be retained, a strong net benefit for retention must be demonstrated.

An overall net benefit can be concluded for the current registration system, many features of which restrict competition (at least potentially). However, the net benefit of most of the features is not strong. Furthermore, the public net benefits being sought through the regulation of ionising radiography appear to be achievable under more general legislation. Therefore, the status quo is not being recommended.

It is recommended that:

- the *Radiographers Act 1976* be repealed;
- radiographers no longer be a registered profession in the Northern Territory;
- the current practising certificate and permit powers of the Radiographers Registration Board be transferred to the licensing powers of the Chief Health Inspector under the *Radiation (Safety Control) Act*;
- the current inspectorial powers of the Radiographers Registration Board be transferred to inspectorial powers of the Chief Health Inspector under the *Radiation (Safety Control) Act 1978*;
- any specific criteria that are deemed to be necessary for the licensing of operators of ionising radiographic equipment be incorporated into subsidiary legislation under the *Radiation (Safety Control) Act 1978*; and
- the need for regulation of non-ionising categories of irradiation in health care be considered in the context of the forthcoming national review of radiation safety control legislation.

Appendix

Terms of reference

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

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

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

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

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

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

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

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

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