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WHY SHOULD PROFESSIONALS COMPETE?

Competition between professionals is limited by restrictions on training places, restrictions on advertising, restrictions on entry, restrictions on use of the professional title, restrictions on practice ownership, restrictions on profit-sharing, restrictions on business location and inconsistencies between State regulations.

There are essentially three types of problems that can emerge when competition is curtailed.

- Restrictions that limit consumers' access to information and allow above-market returns to be earned can allow inefficient and/or incompetent businesses to survive.
- Consumer preferences may not be adequately met. Restrictions on numbers usually means that prices are higher and rural populations can struggle to get service. Consumers can end up paying more than necessary for a service of lower quality than they want.
- Restricting numbers can also mean there is no financial need for professionals to develop new and innovative services, even though there may be changing consumer needs. Existing businesses are more easily able to prosper by providing only traditional services and may even face active disincentives to be innovative and change business structures.

If restrictions on competition were reduced, the supply of professionals would increase and services could be more widely available at a lower cost. It would also stimulate innovation and the creation of new methods of service delivery.

PROFESSIONS AND NATIONAL COMPETITION POLICY.

In 1995, all nine Australia Governments agreed that in order to stimulate economic growth and job creation in our increasingly internationally focussed economy, a co-ordinated approach to market reform was required.

As a result, all Governments undertook to implement, on an ongoing basis, a package of reforms to be known as the National Competition Policy. These reforms are designed to help develop a more dynamic and competitive economy.

In its simplest form, 'competition' in a marketplace is about choice and exists when a number of businesses strive against each other to attract customers and sell their goods and services. Competition generally will foster production efficiency and innovation and thus generate lower prices, greater choice and better levels of service for consumers.

One of the most important National Competition Policy undertakings is that each Government will review and reform all laws that restrict competition unless the benefits of the restriction to the community as a whole outweigh the costs.

Anti-competitive restrictions and regulations on the professions must be comprehensively reviewed by the Commonwealth and all State and Territory Governments and reformed if they are found not to be in the public interest.



THINGS TO CONSIDER

It is important that all options for reform protect public safety and confidence.

The critical question is what level of regulation will provide security for consumers, without unduly restricting business and the rights of customers to provide and receive a service?

Governments must review and decide upon the best balance between law and self-regulation considering:

- The potential for possible harm that may result from poor practice.
- The capacity of the profession to effectively regulate itself.
- The opportunities for co-regulatory arrangements.
- The costs of a fully government controlled regulatory system.
- The ability of government to manage a regulatory system.

It is vital to ensure that there is a clear and real link between any given restriction and reduction of harm.

The capacity of the profession to self regulate is important to consider. It depends heavily on the attitudes of the industry and the degree of legislative backing. If there is little co-ordination or collective spirit in the profession, self-regulation may not be effective because practitioners may just disregard rules set by the professional body.

In addition, self-regulation is open to abuse. It allows professionals to set their own rules and inevitably enables them to use this control in their own interests, rather than those of customers.

Professional services are an important part of everyday life for all Australians. Good use of law will provide the benefits of quality services at the lowest possible cost to the community.

When professional associations set inadequate limits on professional numbers it guarantees higher salaries for them and higher prices for consumers.



REFORMING THE PROFESSIONS

National Competition Council
Community Information
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SELF INTEREST VS. PUBLIC INTEREST

To ensure that public health, safety, and financial integrity are protected Australian States and Territories use a variety of methods to regulate the professions.

Professionals such as doctors, lawyers, vets, architects, nurses, pharmacists, and various allied health practitioners, provide specialist services that require a high degree of specific training and education.

Consumers can find it difficult to determine whether a professional is competent and, because of the skilled nature of the professions, there is often a risk of serious damage being caused by incompetent or unethical practitioners.

For consumers to receive quality service at the lowest possible price, regulation must have clear objectives, be the minimum necessary, and restrict competition among professionals as little as possible.

This paper discusses the role of professional regulation, the problems that can emerge when professions control their own regulatory standards, and the need for transparency, accountability and community input to protect the public interest.

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REGULATION SHOULD BE KEPT TO A MINIMUM AND PLACE THE ONUS OF PROOF ON THOSE WHO ARGUE FOR RESTRICTIONS.

Any system of regulation should ensure that;

- The objectives of the regulation are clear.
- Any restrictions on entry or practice have a demonstrable link to reducing harm.
- Rules are transparent and public.
- Enforcement action is open, accountable, and consistent.
- There is strong community involvement in decision making.
- Regulation is the minimum necessary to achieve the objectives.

HOW ARE THE PROFESSIONS REGULATED?

There are a variety of ways to set professional standards and to regulate who can practise, how they can practise and what services they can provide.

These methods include;

<i>Legislation</i>	Detailed laws are passed by Parliament.
<i>Self-Regulation</i>	Professional guilds or associations set codes of conduct and control entry.
<i>Independent Authority</i>	Independent bodies set and maintain standards.
<i>Market Mechanisms</i>	Little or no regulation and consumers 'vote with their feet'.

LAWS, CO-REGULATION AND SELF-REGULATION

Most professions are 'co-regulated', with standards set by professional bodies but underpinned by law. However, this varies from State to State and between professions.

Sometimes the entire process is controlled by law including, who can enter the profession, how they practise, and the disciplinary processes. By contrast, some professions control the entire regulatory framework themselves, with no specific professional law.

The advantage of self-regulation or light touch co-regulation (minimal government regulation complemented by professional codes of conduct) is that it allows those who have the best technical knowledge of the key issues, the professionals themselves, to determine reasonable standards and to take 'ownership' of the process.

Independence from government can give the profession a greater incentive to maintain standards and may result in a cheaper and more responsive scheme of regulation.

However, when self-regulatory powers are extensive they can be used for anti-competitive purposes.

Excessively restrictive regulation can serve to unnecessarily limit the number of professionals thus keeping supply low and salaries high.

When regulating such things as training places, registration, acceptance of international qualifications, and use of title, the public interest is best served if the regulation has a clearly demonstrable link to consumer protection.

STATE BORDERS – RESTRICTING COMPETITION

Laws and professional regulations differ considerably between the States and Territories.

This makes it very difficult for professional businesses to offer different types of services or to combine with other professionals to extend their reach into new markets.

Recent advances in communications and information technology mean more and more professional firms are operating across State and international borders.

Some firms are attempting to meet the changing needs of their customers with a comprehensive suite of professional services, called 'multi-disciplinary practices'. This might include an international firm of accountants, lawyers, architects and economists, or a suburban general medical practice with a pathology laboratory or x-ray clinic on the premises.

However, in some States there are restrictions on the ownership of professional firms that effectively restrict multi-disciplinary practices.

WHY SHOULDN'T PROFESSIONALS ADVERTISE?

In most States and Territories until recently it was illegal for doctors and lawyers to advertise at all. In some States it is still illegal to advertise price, experience or skills.

Advertising gives businesses the opportunity to give information to their potential customers about the service being offered, the qualifications or experience of the professionals, waiting times and price.

Advertising is one way to give consumers more information about a professional service, and can increase customers' ability to make an informed choice.

Restrictions mean that new businesses (who potentially offer superior services or prices) are not able to inform potential customers of the services on offer.

In most States law firms can only be owned by lawyers, and chemists can only be owned by pharmacists. This means an investor cannot buy a chemist shop and employ a pharmacist to work there. In a rural context this means that unless a township can attract a pharmacist with enough money to buy the business they will not have a chemist. Alternate investors, (for example another shop owner) are prohibited from buying the chemist and employing a pharmacist.

Most of these restrictions were originally intended to guarantee high ethical standards, by ensuring that commercial pressures from non-professional partners or employers did not intrude into the independence of professional decision-making. However, they are becoming less necessary with the strengthened Trade Practices Act in place to protect the public interest. Ownership restrictions are also constraining attempts by innovative businesses to evolve to best serve their customers.

In NSW there is a move on to allow law firms to incorporate. Incorporation would allow law firms to become a company, float on the stock exchange and raise capital. However, because the other States do not intend to change at this stage, the reality is that large national businesses will be unable to take full advantage of the change.

Critics of advertising argue that professionals have reached a certain generic standard by virtue of their professional qualifications, and that it is inappropriate to seek to differentiate themselves through advertising.

There is also an argument that restrictions are necessary as advertising can create demand, for example by encouraging legal action, or making questionable claims to "cure" people of ailments.

The response to this argument is that false, deceptive or misleading advertising can - and should - be prosecuted under and Commonwealth Trade Practices and State Fair Trading laws.

Advertising provides information to the community about professional services that are available. Given that one of the justifications for regulating the professions is the difficulty that consumers have in informing themselves about professional services, it seems incongruous to deny consumers this information.

EXAMPLES OF PROFESSIONAL REGULATION

SOME TYPES OF ANTI-COMPETITIVE RESTRICTIONS	HOW THEY WORK...
<i>Entry qualifications</i>	To enter the profession you must have stipulated academic qualifications and experience. ➔ <i>Lawyers must have a law degree or other prescribed academic qualification</i>
<i>Registration requirements</i>	You must hold a licence to practice (even if you have the appropriate academic qualifications). ➔ <i>Doctors (with a medical degree) cannot practice unless they are on the medical register.</i>
<i>Reservation of title</i>	Only persons with particular qualifications and/or on the register may call themselves by the professional title. ➔ <i>A qualified Bachelor of Architecture who is not registered with the relevant Architects Board cannot call themselves an Architect.</i>
<i>Reservation of practice</i>	Certain types of work cannot be performed by anyone other than specified professionals. ➔ <i>Land valuers are the only people allowed to give a legally binding valuation on land.</i>
<i>Disciplinary processes</i>	Professionals may be asked to explain their conduct, and may be disciplined or prevented from practising. ➔ <i>Nurses' Boards hear complaints against nurses. The Board can impose a range of sanctions, including cancelling registration.</i>
<i>Conduct of business</i>	Rules that prescribe ways in which the professional may or may not conduct their business affairs. ➔ <i>Vets in the Northern Territory in theory must seek formal permission to change their surgery floor plans.</i>

Self-regulation can be open to abuse - it allows professionals to set their own rules and use this control in their own interests, rather than those of customers.

WHEN IS AN ARCHITECT NOT AN ARCHITECT?

In most States businesses are not allowed to use the term 'architect' or it's derivatives in their title or advertising material if less than the majority of the business directors are architects.

In Western Australia in 1994, a qualified Bachelor of Architecture (but not a member of the WA Architects Board) was prosecuted by the WA Court of Petty Sessions for calling himself an architect, even though his advertising clearly stated that he was "not registered by the Architects Board of Western Australia, and not associated with nor subscribed to nor endorsed the actions or principles of the Architects practising in [that] State".

However, in all States, services provided by architects may be performed by non-architects (including building designers, builders, project managers, engineers, town planners, draftspersons etc) – they just cannot designate it as architecture or architecturally designed.