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CENTRE FOR  
INTERNATIONAL  
ECONOMICS

# *NCP review of the Northern Territory Public Health Act*

*Prepared for Territory Health Services*

FINAL REPORT

*Centre for International Economics  
Canberra & Sydney*

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## *Executive summary*

THE REVIEW OF THE *PUBLIC HEALTH ACT* is one of 12 reviews being undertaken of the Northern Territory's health legislation under National Competition Policy (NCP) requirements. Chapter 1 introduces this report and describes NCP principles and procedures. Chapter 2 provides some background information about the act and its regulations.

Chapter 3 addresses the first step that must be taken in any NCP review, namely to clarify the objectives of the legislation. The origins of the current act go back to the end of the nineteenth century, and many of its features are framed in terms which today appear to be reactive and punitive. Despite this, the objectives of current administration must be viewed in a more proactive context of seeking to create healthy environments and community lifestyles which lead to improved health outcomes.

Chapter 4 addresses the next two steps that must be taken in any NCP review, namely to:

- identify the nature of every restriction on competition; and
- analyse the likely effects of the restrictions on competition and on the economy generally.

A number of features of the current legislation that potentially restrict competition have been identified. These include:

- registration-licensing of premises and/or proprietors that might restrict people or organisations from entering the market;
- qualifications and rights of certain persons to undertake specified functions, which also might restrict market entry;
- prescriptive regulations that restrict the quality or location of certain activities;
- rights of the Minister and Chief Health Officer to set charges or make arrangements for certain services;
- regulation of facilities used or practices engaged in the provision of some services;

- costs imposed by regulatory requirements; and
- regulations that discriminate between providers of similar services.

In 1997, the Northern Territory's then Chief Minister announced that the *Public Health Act* would be reviewed, and in the closing stages of this current NCP review THS, in conjunction with the Northern Territory Attorney-General's Department, released a discussion paper to serve as a basis for that review. Features of the legislation proposed are outlined in chapter 5.

Because of these developments, and following discussions with THS, it was decided not to proceed with the final two steps of the NCP review assessment, namely, to:

- assess the balance between the costs and benefits of the restrictions ; and
- consider alternative means of achieving the same results including nonlegislative approaches;

with respect to the current act, but rather to assess features of a structure for new legislation proposed in the discussion paper, as they might impact on NCP criteria. This assessment is made in chapter 6.

The review has concluded that the general structure proposed in the discussion paper for new public health legislation would be in the public interest in terms of NCP criteria. Since major features of current public health legislation restrict competition in ways that are dated and needlessly prescriptive, the review team has recommended that no attempt be made to amend the current legislation, but that completely new legislation be drafted. Specific details of any new legislation, even if based on the discussion paper's proposals, should be subject to the normal regulatory impact requirements for new legislation.

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# 1

## *This NCP review*

### Background to the review

The Centre for International Economics (CIE), a private economic research consultancy, in conjunction with Desliens Business Consultants was commissioned by Territory Health Services (THS) to undertake an independent review of the *Public Health Act* in accordance with the principles for legislation review 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 *Public Health Act* and its regulations is one of 12 pieces of Northern Territory health legislation being reviewed (box 1.1).

In undertaking this review we held initial consultations in Darwin as a basis for preparing an issues paper. This issues paper was circulated in March of this year. It sought submissions from any interested parties, and was designed to serve as a basis for further consultation in April. No submissions were received, and only limited interest was expressed in the April consultation. The principal concerns raised in the April consultation came from a teleconference with interested parties in Alice Springs, who stressed the need to cater for people with disabilities in public health administration. A concern was also raised regarding a need for a rainwater tank register in urban areas to monitor possible outbreaks of Denge fever.

However, late in this NCP review process, THS in conjunction with the Northern Territory Attorney-General's Department released a discussion paper for a review of the *Public Health Act*. In 1997 the Northern Territory's then Chief Minister had publicly announced that such a review would take place. That discussion paper, which itself calls for submissions from the

### 1.1 Acts to be reviewed

- **Public Health Act**
  - Public Health (Barber's Shops) Regulations
  - Public Health (General Sanitation, Mosquito Prevention, Rat Exclusions and Prevention) Regulations
  - Public Health (Night Soil, Garbage, Cesspits, Wells and Water) Regulations
  - Public Health (Noxious Trades) Regulations
  - Public Health (Nuisance Prevention) Regulations
  - Public Health (Shops, Eating Houses, Boarding Houses, Hotels and Hostels) Regulations
  - Public Health (Medical and Dental Inspection of School Children) Regulations
  - Public Health (Cervical Cytology Register) Regulations
- *Dental Act*
- *Optometrists Act*
- *Radiographers 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*
- *Medical Act*
- *Private Hospitals and Nursing Homes Act*
- *Medical Services Act*
- *Hospital Management Boards Act*

public and addresses NCP issues, explores a completely new legislative framework for public health policy in the Northern Territory.

## The NCP process

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.

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# 2

## *The environment in which the Public Health Act operates*

THE NORTHERN TERRITORY'S *PUBLIC HEALTH ACT* is based on South Australian legislation of 1898. It creates a framework for the regulation of particular activities to protect public health in the Northern Territory. It establishes the positions of Chief Health Officer (CHO), medical officers of health, health officers and health surveyors, who have powers to ensure that the provisions of the act and regulations under the act are fulfilled.

A particular responsibility of the CHO, who must be a registered medical practitioner, is to ensure that any risks to public health are minimised by requiring an owner or occupier of land on which an offence has been committed to cause the risk to be removed. Powers and functions of medical health officers and health officers are specified in regulations under the act. In addition, the CHO can delegate his or her powers and functions. Other pieces of Northern Territory health legislation also ascribe functions and powers to the CHO.

The minutiae of what matters and health risks the act covers are found in regulations under the act. There are eight sets of these, covering:

- barbers' shops
- general sanitation, mosquito prevention, rat exclusions and prevention
- night soil, garbage, cesspits, wells and water
- noxious trades
- nuisance prevention
- shops, eating houses, boarding-houses, hostels and hotels
- medical and dental inspection of school children
- cervical cytology register.

The first six of these deal with such things as the registration of premises, sanitary procedures, precautions against diseases, locations of activities, responsibilities of owners and occupiers of premises, and general environmental health issues. Although these regulations have been amended many times, their language and structure still reflect the late 19th century origins of many of their provisions, particularly those relating to nuisance prevention and noxious trades.

The last two sets are different in nature from the first six. Free medical examination and free dental examination and treatment of school children have been provided by the Northern Territory government for many years. These activities are regulated under the *Public Health Act*. Also, in 1996, following an agreement between health ministers of all Australian jurisdictions, each state and territory agreed to establish a Cervical Cytology Register. This, and the use to which information from the Register can be put, are also regulated in the Northern Territory under the *Public Health Act*.

Thus, the act covers a diverse range of activities and has been a convenient platform for the regulation of new programs as thinking on public health matters has shifted from the highly prescriptive regulations that addressed late nineteenth century problems to the more participatory outcomes oriented programs of today. Some aspects of the development of this thinking are referred to in the following chapters of this report.

Many of the functions given to THS through the CHO under the Northern Territory's act are undertaken in other Australian jurisdictions through local government authorities. Local governments in the Northern Territory also have powers under their bylaws to carry out a range of basic public health functions such as animal control and garbage collection. But these duplicate responsibilities of THS under the *Public Health Act* and generally the Northern Territory's seven local government councils have not used their powers in these regards.

However, the CHO could delegate these functions to a local government authority, and has done so to the Alice Springs Town Council in the case of the registration of premises. This is through a funded agreement to regulate environmental health functions. The anomalous situation in the Northern Territory regarding central and local government functions in regard to some public health matters is probably a consequence of the early establishment of the ordinance or act and the development of a local government structure only after self-government in the Northern Territory in 1979.

Many activities of daily life in the Northern Territory are affected by the *Public Health Act*. The ramifications of these for an evaluation of public benefits and costs are diverse. It is generally acknowledged that the legislation is antiquated and in 1997 the then Chief Minister publicly announced that it was to be reviewed. As reported in the preceding chapter, in April this year THS in conjunction with the Northern Territory Attorney-General's Department released a discussion paper for a review of the act.

## 3

*The objectives of the legislation*

AN INITIAL TASK FOR AN NCP REVIEW is to clarify the objectives of the legislation. These might be stated in the act and/or in its subsidiary regulations, orders, etc. Objectives might also be stated in second reading speeches and government policy statements. If they are not explicit in these ways, they may be implied from ministerial directives and the ways in which these are administered. These may be the way in which objectives need to be interpreted particularly when legislation, such as the *Public Health Act*, is old and both ministerial and administrative thinking has moved on apace.

The Northern Territory's current *Public Health Act* contains no statement of objectives, other than its subtitle stating the obvious – it is an 'act relating to public health'. Nor do any of the regulations under the act contain statements of their objectives, though the cervical cytology regulations contain a section on the purpose of the register that the regulations establish. This is to ensure the effective implementation of the National Program for the Prevention of Cancer of the Cervix. The section goes on to spell out what that program is intended to achieve.

As previously stated, the legislative framework is based on South Australian legislation of 1898. There has, of course, been a considerable reorientation of thinking and application of public health principles as social problems have shifted from overcrowding, insanitary conditions and rampant epidemics of the late 19th century to today's needs for citizens to assume more responsibility for controlling their own health. Much of this is international in its origins and scope, as encapsulated in the health promotion strategies and priorities formulated in the World Health Organisation's *Ottawa Charter for Health Promotion* of 1986 and its *Jakarta Declaration on Leading Health Promotion into the 21st Century* of 1997.

Public health legislation in some Australian jurisdictions (principally Tasmania and the ACT) has recently been changed to take account of this new thinking. All other jurisdictions are considering similar changes.

So, although the current act and regulations are framed in terms which may be seen as reactive and punitive, the objectives of their administrators must

be viewed in the more proactive context of seeking to create healthy environments and community lifestyles which will lead to improved health outcomes. Viewing the eight sets of regulations in that framework, the objectives of the current legislation might be considered as encompassing, but not necessarily being exhausted by, the following:

- ensuring that activities of certain classes of individuals or organisations do not transmit disease or other health damage to individuals with whom they do business (for example, barbers);
- ensuring that certain activities do not pose a threat to the physical or emotional wellbeing of communities in which they operate (noxious trades, nuisance prevention);
- ensuring a physical environment that minimises the risk of epidemic diseases (mosquito prevention, rodent control, nightsoil and cesspit management) and is conducive to broadly based healthy lifestyles for all citizens (general sanitation, garbage management, water quality);
- maintaining hygienic premises where people eat, shop, or live in communal accommodation; and
- facilitate proactive health measures among target groups in the community (medical and dental inspection of school children, cervical cytology registration).

The Public Health Legislation Review discussion paper has recommended that a statement of objectives should form part of a new *Public Health Act*. Objectives suggested in the paper are to:

- protect and promote the health of the people of the Northern Territory;
- protect the public from public health risks associated with facilities, equipment, services, products, activities and agents;
- reduce the incidence of preventable disease;
- foster improved health outcomes;
- provide a flexible capacity to protect health;
- monitor disease patterns in order to provide the public with information about health risks, and design appropriate prevention and control policies and programs;
- provide a rapid response to emerging new risks while ensuring that the liberty and privacy of the individual are adequately protected;
- educate individuals including persons licensed under this legislation; and
- foster a cooperative approach to planning and managing public health.

# 4

## *The nature of restrictions on competition*

HAVING CLARIFIED OBJECTIVES of the legislation and the principles under which it operates, 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 tasks are identified in the legislative review procedures as separate steps, for legislation such as the *Public Health Act*, which does not set out primarily to regulate commercial activities, it has been judged 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 (NCC), which has been set up to advise the federal treasurer on progress by states and territories toward fulfilling NCP agreements and to provide guidance on reviews, has suggested seven ways in which legislation might limit competition (NCC, *Legislation Review Compendium*, April 1997, p. 4). According to the NCC, an act (together with its subsidiary regulations, procedures, etc.) 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.



In addressing these criteria in the context of the current *Public Health Act*, three general observations need to be made. First, since the act is largely a framework for the specification of sets of regulations dealing with particular areas of public health concern, most of the impediments to competition are likely to be located within the subsidiary regulations rather than in the primary legislation itself.

Second, the public health issues addressed in these sets of regulation are extremely diverse and many of them do not match well with the thrust of the NCC's criteria. For example, the cervical cytology regulations are not oriented to the control of commercial activities. On the other hand, the regulations of barbers' shops and of shops, eating houses, boarding houses, hostels and hotels directly impinge on activities of commercial operations and could restrict competition between them. It is these latter two sets of regulations that are the principal focus of the following discussion, though some matters are raised in respect to others.

Third, in examining legislation in an NCP review, many of the features identified in terms of NCC criteria may be more *potentially* anticompetitive than *actually* so. This needs to be particularly borne in mind in the regulation of public health, which is oriented to the maintenance of standards of environmental health that the community expects.

A concern about standards in an NCP legislative review is not to question the need for them as such, but rather 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 providers who could effectively service specified needs at low cost. In these regards, a preference might be, wherever possible, to specify standards as *performance based rules* that focus on outcomes rather than as *prescriptive rules* that focus on technical or qualification requirements. Specifying outcomes to be achieved allows leeway on how they are to be achieved at least social cost and encourages innovation.

## Restrictions of entry and exit

The Public Health regulations specify restrictions on entry into a number of services. In some cases this is through the requirement of registration of premises or proprietors and in other cases it is who is allowed to conduct a service. Restrictions of the first type generally have little impact on competition unless the requirements for registration are onerous and impose

significant costs on the business, either through fees or through requirements for registration.

Restrictions of the second type are more likely to be anticompetitive. If activities such as garbage collection are undertaken through a contract that is awarded under competitive tender, then competition is largely preserved. However, if they grant an exclusive right to practise, their potential impact on competition is more likely to be realised.

### *Registration of premises*

Barbers' shops are required to register under the *Public Health (Barbers' Shops) Regulations*. Section 4 of these regulations requires that the premises be registered. Section 5 sets out the conditions for registration. An application must be filled in and lodged with the CHO. Once the application is granted, a form must be submitted to gain a certificate of registration. The fee for registration is \$65. Annual renewal of registration is required. The penalty for contravention of any section of the regulations (offence) is \$1000 and \$100 for every day thereafter when the offence continues (section 20).

Eating houses are also required to be registered. Section 12 of the *Public Health (Shops, Eating Houses, Boarding Houses, Hostels and Hotels) Regulations* sets out the requirement for registration of an eating house and the entry of the name of the proprietor. The procedure for registration is similar to that of barbers' shops and is set out in section 13. The fee for registration is \$100. The penalty for contravention of the requirement to be registered (section 32) is \$1000 and \$100 for every day thereafter when the offence continues.

The *Public Health (Noxious Trades) Regulations* state that a licence is required to carry out a noxious trade. Many of the noxious trades mentioned in the regulations refer to old activities carried out at the time the legislation was written, which are no longer part of the Northern Territory economy. Effectively, the licence is per premise, and the fee depends on the activity undertaken. The fees are very low (for example, the highest fee is \$10 per premise for activities such as conducting blood boiling, soap and candle making, \$6 for fish meal making, and a low of \$2 for marine stores (second hand clothing)). There are no requirements for obtaining a licence beyond compliance with the regulations. Failure to comply with the regulations will see loss of licence, and a fine of \$1000, and \$100 for every day thereafter when the offence continues.

In addition, in the *Public Health (Nuisance Prevention) Regulations*, written consent is required from the CHO to erect, establish, maintain or carry on a

boiling down establishment, tannery or fell mongering establishment (section 26).

At the turn of the previous century, when the act was written, it might have made sense to include regulations on noxious trades within the *Public Health Act*. But in recent years, environmental protection legislation has been developed to cover emissions from noxious industries and in turn public health. It would therefore seem more sensible to include such regulations as part of environmental protection legislation. This said, it is recognised that this might require a reorientation of parts of that legislation, which does not focus on human health.

### *Registration of proprietor*

Unlike eating houses and barbers shops, boarding house premises do not have to be registered. Rather, it is the proprietor who has to be registered. However, the requirements for a person to be registered relate to the premises of which they are a proprietor. Section 37 of the *Public Health (Shops, Eating Houses, Boarding-Houses, Hostels and Hotels) Regulations* sets out the construction provisions for the boarding house that must be met for the proprietor to be registered. The application for registration is made to the CHO and must be renewed annually. The annual fee is set in accordance with the number of boarders, as set out in table 4.1.

#### **4.1 Annual registration fee for boarding house proprietors**

<i>Number of boarders</i>	<i>Fee</i>
	\$
Two not more than ten	100
More than ten not more than 20	125
More than 20 not more than 40	150
More than 40	250

### *Other restrictions on entry*

There are a number of elements of the act and its regulations that restrict entry in other ways. For example, the act specifies that only a registered medical practitioner, or person who is eligible to be a registered medical practitioner, can be appointed as the CHO (section 5 of the act).

The regulations also provide for the exclusive right of persons appointed by the CHO or Health Surveyor to undertake certain tasks. As reported above, if an exclusive right to practise is granted, then a potential impact on competition is more likely to be realised. However, some of these restrictions might now have been overtaken by time.

For example, under the *Public Health (Night-Soil, Garbage, Cesspits, Wells and Water) Regulations*, persons who may remove night soil (section 4) and/or empty closet pans (section 6) must be a contractor or employee of a contractor or other persons appointed in that behalf by a Health Surveyor. Similarly, garbage may only be removed by a contractor who has an agreement with the Minister for the removal of garbage or by any other person appointed in writing by the Minister to carry out the services of removing garbage (section 29). These restrictions may now have little anticompetitive impact in practice.

However, the *Public Health (Medical and Dental Inspection of School Children) Regulations*, which provide for THS funded medical and dental examinations of school children, restrict their provision to medical practitioners, dentists and dental therapists authorised by the CHO. Nothing in the act or regulations restricts authorisation to professionals employed in the public sector. But since THS provides and funds the services, in practice public providers could be favoured – which would compromise principles of competitive neutrality. The review team received no evidence that private practitioners are being squeezed out of this ‘market’. However, it is noted that under the *Dental Act*, all dental therapists practising in the Northern Territory must be public sector employees.

The medical and dental inspection regulations also require that parents submit their children to any such examinations as are prescribed by the CHO in the regulations. The penalty for contravention of any section of this regulation is \$50 and \$4 a day for any failure to comply thereafter.

## **Restrictions on quality, level or location of goods and services available**

A number of regulations potentially restrict the quality, level or location of goods and services available. Examples are as follows.

- The regulations on eating houses prohibit use of meat that has not been slaughtered at a licensed abattoir (section 23(a)).
- The regulations governing boarding houses prohibit registering basements as sleeping apartments (section 42).
- The nuisance prevention regulations contain a number of sections that limit the keeping of animals. These may or may not limit business opportunities. In a practical sense, most apply to a bygone era. Examples are:

- goats cannot be kept within 1 kilometre of the post office at Katherine or Alice Springs (section 39),
  - horses shall not be kept in the Darwin town area on any land situated in the area described in the schedule (section 42); and
  - the occupier of any land shall ensure that a horse, ox, sheep or goat is prevented from approaching within 40 feet of any place where food is manufactured, stored, or exposed for sale (section 47).
- The nuisance prevention regulations also prohibit fish or fish products from being prepared, covered, packed or stored except in areas declared exempt by the Minister by notice in the gazette (section 19 (1)(2)). Storing and packing pearl shell is exempt from this provision (19(3)).

The penalty for failure to comply with these requirements is \$1000 and \$100 a day for failure to comply thereafter.

## Restrictions on prices and/or production levels

The regulations on night soil, etc. provide for the CHO to set the fee for dislodging, cleansing or recharging septic tanks (section 28). The Minister also may make arrangements for the collection of night soil and/or garbage from premises, being premises not within the Municipality of Darwin. The Minister sets the charge or fee for such services and additional services on terms and conditions as he sees fit (section 40 night soil, etc. regulations).

No other price determinations for the provision of services made under regulations were brought to the attention of the review team.

## Restrictions on price or type of input used in the production process

Many of the regulations associated with the current *Public Health Act* are prescriptive in terms of the types of inputs to be used in the production process. The motivation behind this has, no doubt, been to ensure that facilities and practices do not constitute a threat to public health. Some of the regulations are also to ensure occupational health and safety standards – such as the dimensions of garbage bins to prevent back injury in garbage collectors. However, many of these restrictions are not enforced today as new and better facilities and practices have emerged that provide greater protection to public health. Some do remain in force and may still be the best way of achieving the objective of protecting public health. They may, however, limit competition.

Regulations that specify outcomes, but do not specify how these outcomes must be achieved, are less likely to be anticompetitive. Only if the required outcomes were judged to set too high a standard, which excluded some consumers and producers from the market, would outcome orientated regulations be anticompetitive. And, as noted earlier, the additional concern with input orientated regulations is that they preclude innovative approaches that can reduce costs and improve outcomes.

### *Regulations on facilities*

A number of the regulations are prescriptive about the facilities to be provided. These range from eminently sensible for current circumstances to antiquated. Some examples are provided below.

- The regulations on barbers' shops (section 7) require effective waste pipes and adequate supply of clean hot and cold water. They also require a sufficient supply of clean towels, nail brushes and soap, that walls and floors be in a thoroughly clean condition and that at least two water tight metal receptacles with close fitting lids be provided: one for soiled towels, the other for hair clippings and other trade waste.
- The regulations governing boarding houses, in addition to the requirements for registration of the proprietor, set out requirements for alterations (section 41), ventilation (43) and prohibition of certain linings (section 46).
- A number of the regulations governing noxious trades specify requirements for the premises. These range from fences (section 4), walls (section 5), floors (section 6) to drainage (section 9).

### *Regulations on practices*

A number of regulations of practices are highly prescriptive.

- Part V of the regulations governing barbers' shops sets out the procedures for disinfecting, including the solutions that must be used. Part IV sets out sanitary provisions. These include:
  - section 14, using styptic in powder or liquid form on sterile cotton wool to arrest bleeding;
  - using only bottles fitted with a screw cap and sprinkler as a bench bottle (section 15); and
  - wearing a clean coat or overall of white or light-coloured washable material.

- The regulations governing eating houses are less prescriptive and more outcome focused. However, they do contain some prescriptive provisions. For example:
  - section 17(1) forbids a proprietor from allowing the removal of food scraps and trade waste for consumption by pigs between the hours of 9 am and 8 pm – this regulation has become redundant as the feeding of swill to pigs has been banned; and
  - the regulations on eating houses require that chests or chambers used to store meat shall be kept exclusively for that purpose (section 22).
- The duties of the proprietor of a boarding house, etc. are set out in section 47 of the regulations on boarding houses, etc. As with the requirements on eating houses, most of the regulations are outcome orientated. But some are still input orientated, for example:
  - part (g) requires that the seat and floor of every sanitary convenience and floor of every bathroom be scrubbed and washed with soap and water daily.
- The regulations governing noxious trades include a number of sections that specify the procedures to be undertaken.

## Regulations that confer significant costs on business

A number of elements of the *Public Health Act* and its regulations may confer significant costs on businesses. These have two main forms: the first governing the right of the CHO or his or her appointee to instigate and/or order work be undertaken; the second requiring significant capital investments to satisfy the regulations.

### *Compliance with orders of the CHO*

The *Public Health Act* allows the CHO to require any occupier of land to rectify any offence, defined as ‘an act that is considered a risk to public health’ (section 7). If the requirement is not met, the CHO or his or her appointee can enter the land and correct the offence. The CHO can sue to recover the costs of rectifying the offence.

In all the regulations there are provisions for the CHO or Health Surveyor to enter and inspect the premises. Some costs could be associated with complying with the inspection rights of the CHO or Health Surveyor, and meeting their directives could also impose costs. Two examples are given below.

- The regulations on boarding houses require proprietors to cause any part of their premises or any fittings thereon to be painted at such times and in such a manner as is directed by a medical health officer (section 47(f)).
- Section 45 of the night soil, etc. regulations states that a health officer may, by notice in writing, require the occupier of any premises on which there is a cesspit to demolish the cesspit, within the time specified in the notice. How the cesspit must be demolished is specified in the regulation.

### *Capital investments*

There are a number of examples of regulations that may impose costs on businesses.

- All shops, eating houses, boarding houses, hostels and hotels where persons are employed must provide toilet facilities (section 5). While this is not an issue, the requirement to provide sex segregated facilities if employees of both sexes are employed may be onerous for small businesses. This also may bias employers against hiring particular persons.
- In the regulations governing shops, a shop cannot be used as a residential or sleeping apartment (section 14). While this seems sensible, for very small enterprises in remote areas this requirement may prevent the establishment of a retail business.

## **Regulations that discriminate between service providers**

Regulations that discriminate between service providers are potentially anticompetitive as they may advantage one provider over another. An example is in the regulations governing the cervical cytology register. These require the person in charge of a laboratory in the Northern Territory to provide the CHO with the details (of test results for cervical cancer) for recording in the register (section 7). Such a duty is not imposed on a laboratory outside the Northern Territory, for which it becomes the obligation of the medical practitioner who took the sample to ensure that the results from that laboratory are recorded on the register. This could result in a bias toward using Northern Territory laboratories for testing, as to do so would reduce compliance costs for medical practitioners.

A boarding house is defined in the shops, eating houses, etc. regulations to include any house, licensed premises under the *Liquor Act*, lodging house,



hostel, residential flat, motel, tent, caravan, building, structure, whether permanent or any other premises and part thereof, in which three or more persons, exclusive of the family of the proprietor thereof, are lodged or boarded for hire or reward from week to week or for more than a week. This definition allows short stay facilities not to be registered or subject to the regulations.

The act regulates aged care hostels but does not cover nursing homes. Nursing homes are regulated under the *Private Hospitals and Nursing Homes Act*.

The act provides the right to regulate all activities on land. It does not regulate activities that are carried out at sea, on water (for example, on boats moored at a dock) or on mobile premises. The practical implications of this are that some activities that are required to comply with the regulations when conducted on land are not required to comply when conducted elsewhere.

This is the case with the registration of barbers' shops. It is the barber's premises, not the barber, that must be registered. Because the registration is premises based, mobile barbers are not required to register under the regulations.

## 5

*A proposed new Public Health Act*

THE REMAINING TASKS FOR NCP REVIEWS are to assess the balance between the costs and benefits of each identified restriction on competition and to consider alternative means of achieving the same results, including nonlegislative approaches. However, in the case of the *Public Health Act*, to pursue these requirements would be only of historic value, since it is generally conceded that an entirely new act, based on contemporary thinking and the current range of public health activities, is needed.

To this end, towards the end of 1997 the then Chief Minister of the Northern Territory announced publicly that a review of the act was to take place, and in April of this year THS in collaboration with the Northern Territory Attorney-General's Department issued a discussion paper to serve as a basis for public comment for that review. That paper states that its purpose is to promote discussion, and its proposals do not necessarily reflect the views of the Northern Territory government or of either sponsoring department. However, it also states an intention to draft a completely new piece of legislation which will serve the Northern Territory in the new millennium.

For this reason, and following discussions with THS, it has been decided not to proceed with the final two steps of the NCP review assessment with respect to the current legislation. Rather, some lessons learned about the nature of restrictions on competition in the current legislation are used to comment on proposed features of the new act and assess, in general terms, their likely consequences in terms of NCP criteria. The discussion paper itself addresses NCP issues in a concluding section.

**What is being proposed***Objectives and scope*

The discussion paper briefly reviews the origins of the existing legislation and the emergence of new goals and approaches to public health in recent

years. It proposes that a statement of objectives should form part of the new act (objectives suggested were reported in chapter 3 of this report).

It also proposes that the act should apply to the Crown (that is, all Northern Territory government functions) and that it (and any standards, guidelines and codes of practice) should apply in the same way to all land and all persons in the Northern Territory. However, in view of the many different demographic, physical and social features of the Northern Territory, it proposes that where communities face particular public health issues, standards may be applied which are directly aimed at ameliorating those difficulties.

### *Administration*

The roles and responsibilities of the various persons and groups who will administer the legislation are discussed. The CHO would retain overall responsibility of public health in the Northern Territory. It is proposed that the CHO should have special powers in the case of public health emergencies. The CHO would also have powers of delegation to authorised officers and, with the approval of the Minister, to hold an inquiry into any public health issue.

Unlike the current act, which makes no mention of local governments, it is envisaged that responsibility for day to day monitoring of many public health functions in the Northern Territory's seven municipal council areas would be delegated to the councils. Specific powers would be delegated to the councils, with the councils' consent. Councils would be given the power to levy fees and charges for these functions, and where they are carried out they would be obliged to appoint at least one professionally qualified environmental health officer. Outside local government areas, the CHO would remain directly responsible for these functions.

### *Public health plans*

It is proposed that the new act would include a provision for public health plans as a means of the Northern Territory government and local governments planning and delivering high quality public health programs in a coordinated way. These would operate for the councils under powers delegated from the CHO, and presumably would have the status of subordinate legislation. It is envisaged that plans will contain manageable programs and strategies with realistic targets and performance indicators, that they must be formally written within a five year period and reviewed

internally each year, and that the CHO will have the power, after consulting with the Minister, to take action to remedy any default by a council.

### ***Generic health risk activities and licensing and registration procedures***

It is proposed that a number of registration matters currently dealt with specifically in the various bodies of regulation should be dealt with generically and flexibly by the Minister issuing gazette notices. Rather than specifying the various public health risks activities in sets of regulations, the Minister would gazette modifications to a pre-existing list. Persons wishing to carry out those activities would be licensed to do so. Similarly, existing specific registration requirements would be replaced by the Minister gazetting which types of premises would need to be registered for public health reasons.

There may seem little point in licensing a person in addition to requiring registration of premises. However, the discussion paper points out that some activities can be undertaken away from registered premises (for example, hair dressing and acupuncture can be undertaken in a client's home). Owners of a business conducting public health risk activities should not be held accountable for an operator's activities if those activities have been undertaken improperly, independently and away from the proprietor's registered premises.

The discussion paper proposes that licences should be issued in accordance with specific guidelines and with reference to compliance with any relevant guidelines. The very specific structural and hygiene provisions of existing registration requirements could be better dealt with in approved guidelines and codes of practice, and should be outcomes based. And for both licensing and registration, it is proposed that fees be based on a user pays philosophy, with those having a proven good practice record paying less than those who require more frequent monitoring.

### ***Improvement and prohibition notices and orders***

Proposals are made to introduce a general system of improvement and prohibition notices and orders. The approach taken is similar to that which has successfully been used in environmental protection legislation elsewhere in Australia and other countries. It is also currently employed in the Northern Territory's *Work Health Act*.

Where an authorised officer believes a contravention is occurring or is likely to occur, an improvement notice may be issued. In the event that an

improvement notice is not complied with, the CHO may apply to the court for an improvement order. A prohibition notice may be issued where there is an imminent serious risk to public health. It may prohibit a person from carrying out, or allowing to be carried out, an action in relation to a public health risk, or it may limit the extent to which such an action is carried out. In the event that a prohibition notice is not complied with, the CHO may apply to the court for a prohibition order.

### *Nuisances*

The nuisance provisions of the current act were developed over a long period and have become increasingly specific and harder to enforce. For this reason it is proposed that a nuisance be defined in a general way as a condition, state or activity in relation to a number of specified (but not exhaustive) matters which:

- has put or may put the public's health at risk; or
- has damaged or may damage public health.

The proposals that follow from this definition attempt to provide a formal and simple way for affected members of the public to bring such nuisances to the attention of the relevant authorities and to obtain redress, while at the same time limiting inappropriate use of the legislation – for example, as a weapon in neighbourhood squabbles.

The proposals that follow from this definition attempt to provide a formal and simple way for affected members of the public to bring such nuisances to the attention of the relevant authorities and to obtain redress, while at the same time limiting inappropriate use of the legislation, for example as a weapon in neighbourhood squabbles.

Any one who is affected may complain to an authorised officer. Following the investigation of a complaint, the authorised officer must consider whether an educational process should precede the possible use of an abatement notice. But if the authorised officer has reasonable grounds to believe that a nuisance exists, he or she may issue an abatement notice which describes the nuisance, the period within which it is to be abated and may specify which actions are required. If the abatement notice is not complied with, the CHO may apply to the court for an abatement order.

### *Cervical cytology register and medical and oral health examination of children*

As reported in chapter 2, the *Public Health (Cervical Cytology Register) Regulations* and the *Public Health (Medical and Dental Inspection of School Children) Regulations* are different in nature from the other six bodies of regulation made under the act. These two sets of regulations are addressed briefly in the discussion paper. Except for possible simplification of words, it is proposed that the current cervical cytology register regulations be enacted into the new legislation in their current form.

In regard to the medical and oral health examination of children, the discussion paper proposes a number of changes. The term ‘oral’ would replace ‘dental’ to place a greater focus on prevention and health promotion; examination could be by an authorised nurse in addition to the categories of professionals (medical practitioner, dentist or dental therapist) currently authorised; consent would be required for the child by parents or guardians for examination; and the legislation would provide for the recording of non-identifying data for the purpose of monitoring and designing programs to improve the health of Northern Territory children.

### *Other provisions*

A section of the discussion paper deals with appeals and notices, with proposals that they follow a standard format for all public health issues. Other matters deal with powers to enter, search and seize; disclosure and recording of information; control, remove or destroy articles and substances constituting a threat to public health; compensation; and a number of offences under the act and related issues. A provision is also proposed to give the CHO power to establish registers of information which he or she considers may assist in promoting and protecting public health.

## **NCP issues in regard to features of the proposed new act**

The discussion paper contains a concluding section on the NCP implications of the proposed features of the new act. These follow the structure of required steps of an NCP review of legislation.

### *Objectives of the proposed legislation*

The essential question raised is whether the restrictions on competition contemplated for the proposed act are necessary to achieve the objectives of the legislation. Those objectives are encapsulated as being to foster a

cooperative approach to planning and managing public health; to provide flexible capacity to protect the health of the people of the Northern Territory; and to foster improved health outcomes. A number of additional objectives flow from these.

### *The nature of restrictions on competition*

Like the current act, the new act is seen to be an enabling act with most of the restrictions on competition being found in regulations. These would largely be the licensing and registration requirements aimed at ensuring that standards necessary to protect the public interest are met. A 'public health risk activity' would be defined as any activity that may result in the transmission of a disease. Licensing and registration requirements for conducting such activities would clearly restrict competition and have an impact on business. However, in line with the move away from the prescriptive approach of the existing act, the regulations would be based on achieving desired outcomes. Very specific structural and hygiene provisions would be removed.

The proposed licensing requirements would not restrict numbers but would require certain standards to be maintained, based on the level of perceived risk. The focus would be on non-health care workers such as tattooists and others involved in body piercing and skin penetration activities, to ensure that recognised national or international protocols are followed. Medical practitioners, dentists, nurses and other health care professionals would be exempt from licensing requirements because of other legislative controls in place.

The provisions for the registration of premises would be generic rather than specific as they are in existing regulations. The discussion paper envisages that guidelines on the public use of premises, which would depend on the perceived risk to public health, would be issued from time to time. Compliance would only be required if guidelines are in place. If premises were seen as no longer capable of posing a threat to public health, the guidelines could be revoked without the requirement to amend the act or regulations. Conversely, there could be a quick response through new guidelines where particular premises are not covered and a new public health threat emerges.

### *The likely effects of the restrictions on competition*

The discussion paper recognises that the proposed restrictions would limit entry to the various public health risk activities to those persons who

satisfy the legislative requirements. However, there would be no restrictions on the numbers of persons who seek licensing for specified activities from receiving licences, or on numbers of premises being registered. No other anticompetitive consequences were identified.

### *The costs and benefits of the restrictions and how they balance*

The discussion paper poses the question of what outcomes would be achieved in terms of public health risk reductions with the restrictions compared with what would not be achieved if the restrictions were not in place. A conclusion is drawn that the public interest is best served (that is, benefits exceed costs) through regulation which seeks to minimise health risks by reducing prescription and facilitating the achievement of desired outcomes. This is the orientation of restrictions on competition in the proposed act.

### *Alternative means for achieving the same result, including nonlegislative approaches*

The discussion paper acknowledges that sometimes other ways of responding to public health risks or of achieving certain public health outcomes, both regulatory and non-regulatory, may be appropriate. A number of nonlegislative options (such as information campaigns and health promotion) and legislative options (such as mandatory information disclosure) are listed, without any further comment about their pros and cons in particular circumstances.



# 6

## *The NCP review team's conclusions and recommendation*

### **The general structure proposed**

The discussion paper presents a 'skeleton' of a new approach to public health legislation for the Northern Territory. The review team is in no position to assess the public benefits of the objectives which the proposed legislation sets out to achieve, or the 'new public health' thinking which underpins it. However, the new 'generic' approach to the nomination of public health risk activities, licensing of persons and registration of premises could make for a more neutral treatment of the various facets of public health administration than at present. Its emphasis on outcomes to be achieved rather than on the prescription of facilities and procedures could also impose less restriction on the ways in which businesses provide services to the community.

This said, it is likely that treatments of individuals and businesses would be more neutral and public health outcomes more consistent only if the reference guidelines proposed are clearly articulated, publicly known and drawn up in terms of consistent public health criteria that are outcomes oriented. This is because the generic approach, with outcomes oriented performance requirements, is inherently more discretionary than prescriptive regulation. And in the absence of guidelines based on consistent criteria, greater discretion could lead to more disparate treatment of individuals and businesses.

For this reason, it may be important not only to formulate objectives for the act, but also goals for subsidiary legislation (regulations and public health plans) made under the act. These could indicate expectations about how each of the regulations and plans should contribute to the wider objectives specified in the act. That such goals should be specified is implied in the discussion paper's view of public health plans, which 'will contain manageable programs and strategies with realistic targets and performance indicators'.

This may be doubly important in view of the emphasis in the proposals on delegation of many public health responsibilities to the municipal councils. This was not a feature of the old legislation because it was enacted prior to self-government in the Northern Territory and the creation of a local government structure. The principle of 'subsidiarity', that decisions are most likely to be effective and efficient the closer they are made to the people affected by them, suggests that there might be a significant public benefit from this proposed approach. But it runs the risk of policy fragmentation unless it is guided by coordinated goals directed at community-wide objectives.

## Specific matters

### *Licensing and registration*

Although there are benefits from taking a generic approach to licensing individuals and registering premises, it must still be acknowledged that these controls limit entry to those individuals and premises that meet the standards required. Furthermore, a generic approach to licensing would increase one facet of regulation, since licensing of individuals is not a general feature of current arrangements. Currently a licence is required to carry out a 'noxious trade' (of which virtually none now exists) while proprietors of boarding houses are the only individuals who require registration under the act.

Notwithstanding this additional form of regulation, the review team considers that it would lead to more neutral treatment of businesses, and presumably to improved public health outcomes. This is because, as the discussion paper points out, some public health risk activities are not tied to specific premises, and owners of particular businesses may not be able to be held responsible for some activities that are undertaken improperly. The licensing requirement would allow direct accountability to be sheeted home to the practitioner, which is where it should lie for some public health risk activities.

Although licensing and registration limit entry, the review team does not consider that they are anticompetitive. Neither licensing nor registration as such would set limits on numbers entering a particular public health risk activity. Which individuals could enter a public health risk activity would be determined solely by the preparedness of practitioners or business proprietors to meet public health care standards. Nor would the user pays approach to licence or registration fees outlined in the discussion paper

impose an anticompetitive cost on entry. The risk assessment approach proposed might result in different cost imposts on different practitioners or proprietors undertaking similar activities, but these imposts would be proportional to costs of the regulator in monitoring the assessed public health risks.

The review team concludes that, in principle, the benefits of the approaches to licensing of individuals undertaking public health risk activities, and to registration of premises in which those activities are conducted, exceed their costs, and therefore would be in the public interest.

### *Standards*

A concern about standards in an NCP review is not to question the need for them as such, but rather to ensure that they do not needlessly restrict competition in achieving their objectives. Several features of existing prescriptive standards were identified in chapter 4 that restrict the quality, level or location of goods and services available, and/or restrict the types of inputs used. These are likely to stifle innovation and prevent quality services being provided at least cost.

The discussion paper proposes the removal of very specific structural and hygiene provisions and their replacement with requirements based on desired outcomes. The review team considers that this would serve the public interest. It acknowledges, however, that it may not be possible or desirable to remove all standards specified in terms of particular inputs or processes to be used. Where this is the case, it would be desirable to accompany the prescription with a statement of the outcome being sought, and the Minister should have the power to waive the prescription if, to his or her satisfaction, a practitioner or proprietor can demonstrate that the outcome can be achieved in an alternative way.

### *Other restrictions*

Chapter 4 also identified some features of the current act that can impose costs on businesses arising from compliance requirements with orders of the CHO, capital investment requirements, and some regulatory discriminations between various classes of business.

Proposals made in the discussion paper regarding improvement and prohibition notices and orders, and nuisance abatement notices and orders, deal in principle with compliance issues equitably and neutrally across a number of public health risk activities. Most of the discriminatory capital

investment requirements would presumably be resolved under the outcomes oriented requirements. The generic public health risk activity approach should, in principle, lead to equitable treatment of various classes of business.

In this latter regard two issues raised in chapter 4 need further comment. It was noted there that the current *Public Health Act* regulates aged care hostels but does not cover nursing homes, which are licensed under the *Private Hospitals and Nursing Homes Act*. In the associated NCP review of this latter act, it has been recommended that all aging-in-place establishments (including aged care hostels and nursing homes) should be licensed together under one revised act.

The second issue is the observation made in chapter 4 that there is an obligation on medical practitioners who take cervical cytology samples that are not tested in laboratories in the Northern Territory to ensure that results from those laboratories are recorded in the Northern Territory's register. This could result in a bias towards using laboratories in the Northern Territory in order to reduce compliance costs for medical practitioners. It is recognised that THS has no means for ensuring compliance by laboratories outside the Northern Territory to register test results in the Northern Territory. However, this issue might be considered when or if the current cervical cytology registration regulations are incorporated in new legislation.

The only other matter of a discriminatory nature raised in chapter 4 not addressed in the discussion paper's proposals is the requirement of the current act that the CHO be a registered medical practitioner, or a person who is eligible to be a registered medical practitioner, in the Northern Territory. It is appreciated that the CHO, while appointed under the *Public Health Act*, has statutory powers and functions under other legislation. It is also recognised that in view of the range of powers and functions undertaken by the CHO, it might be highly likely that a registrable medical practitioner would fill the position.

In its submission to the NCP review of the Northern Territory's *Medical Act*, the Top End Division of General Practice argued that the requirement in the *Public Health Act* that the CHO be a medical practitioner should not be changed. The submission argued that this requirement is particularly necessary in the Northern Territory 'where the burden of especially infectious disease is such that a medical practitioner is an essential qualification to perform this position'.

However, in line with proposals made in other NCP reviews of the Northern Territory's health legislation, the review team considers that new legislation should provide for any person with appropriate qualifications and experience, irrespective of professional classification, to be eligible for appointment to the position of CHO.

### *Alternative approaches*

The discussion paper listed a number of alternative approaches, both legislative and nonlegislative, to the framework it proposed for the new public health legislation. Most of the legislative approaches suggested appear to be either equally or more regulatory than those proposed, while others might be compatible with those proposed. Without examination of them in detail, nothing in principle suggests that they would serve the public interest more effectively than the legislative approaches proposed.

Most of the nonlegislative approaches listed are not incompatible with the approaches proposed, and in particular circumstances might be usefully adopted. However, before they could be proposed as a general approach to assuring acceptable public health outcomes, much greater assessment would have to be made of them than has been possible in this NCP review.

## **Recommendation**

Since major features of current public health legislation restrict competition in ways that are dated and needlessly prescriptive, the review team recommends that no attempt be made to amend the current legislation but rather, as appears to be current government policy, completely new legislation be drafted.

To this end, the review team has concluded that the general structure for new public health legislation, as proposed by the discussion paper, would be in the public interest in terms of NCP criteria. This said, specific details of any new legislation, even if based on the discussion paper's proposals, should be subject to the normal regulatory impact requirements for new legislation.



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## *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.