

**COMPETITION POLICY REVIEW TEAM**

**DEPARTMENT OF HUMAN SERVICES**

**NATIONAL COMPETITION POLICY**

**LEGISLATION REVIEW**

**OCCUPATIONAL THERAPISTS ACT 1974**

**REPORT OF THE REVIEW PANEL**

**FEBRUARY 1999**

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

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## INTRODUCTION

The following report concerns the review of the *Occupational Therapists Act 1974*. The review is conducted in compliance with an obligation upon the South Australian Government under clause 5 of the Competition Principles Agreement. The Competition Principles Agreement is one of three agreements signed by the Commonwealth, State and Territory Governments in April 1995. These three agreements give effect to the National Competition Policy.

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

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

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

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

*Occupational Therapists Act 1974*  
*Occupational Therapists Regulations 1988*

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

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

References to “the Act” are references to the *Occupational Therapists Act 1974* and references to specific sections are references to sections of the Act unless indicated otherwise. References to “the regulations” are references to the *Occupational Therapists Regulations 1988* and references to specific regulations are references to regulations contained in the regulations unless otherwise indicated.

## CONSULTATION

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

Further comments were sought from those persons making submissions on the Issues Paper in relation to the alternatives to legislative restrictions. Only two such submissions were received. Where this report refers to an undated submission, that submission is in relation to the Issues Paper.

Appendix 8 contains the consultation list and Appendix 7 contains a list of submissions received by the Review Panel.

The closing date for submissions was 18 December 1998.

## PART 1: CENTRAL ISSUES

### 1.1 Purpose of Act

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

Submissions were sought on whether the Act should state, in its objectives, that its purpose is to protect the public. In general, the submissions agreed that it should.

#### Recommendations

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

### 1.2 Markets

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

## **Rehabilitative Therapy Services**

The provision of services that come within the scope of occupational therapy is not restricted to registered occupational therapists.

However only a person registered under the Act may use the title “occupational therapist” and describe his or her practice as “occupational therapy”<sup>1</sup>. In this paper, the term “occupational therapist” is used to mean a person registered under the Act, and the services provided by them and other (unregistered) persons, referred to as “rehabilitative therapy services” for convenience.

Rehabilitative therapy may constitute a broad area of practice and as such is difficult to define. The Act defines an “occupational therapist”, and correspondingly “occupational therapy”, to be a “person who initiates, supervises or controls any therapeutic activity of a kind commonly prescribed or recommended by medical practitioners or other professional workers concerned with health care for the amelioration or alleviation or physical or mental disorders or disabilities”<sup>2</sup>.

Other, unregulated, professionals, such as occupational therapy aides and diversional therapists, may also provide rehabilitative therapy services in the course of their practice. In addition, professions such as physiotherapy, which are regulated by different legislation, may also involve the provision of such services. The market for the services of each profession overlaps when a consumer chooses whether to seek assistance from an occupational therapist or another provider.

The scopes of practice of the different rehabilitative therapists, and consequent similarities, are examined in detail in Appendix 2.

Occupational therapists are employed in public and private health care organisations, including hospitals, nursing homes, rehabilitation centres and community health care centres. Increasingly, they are also working in a private practice. There are different areas of practice, the most common being aged care, physical rehabilitation and paediatrics. As at 30 June 1998, there were 507 occupational therapists registered in South Australia.

Rehabilitative therapists and other unregistered persons are employed in similar organisations, but are less likely to be in private practice. The Panel has received no evidence as to the numbers of such persons practising in South Australia.

Therefore competition may occur between occupational therapists and unregistered persons when an employer is seeking to employ a rehabilitative therapist. When doing so, the employer may consider many factors including its general duty of care to its clients, consumer expectations and funding arrangements. While the Act demarcates members of the professions, the Act does not restrict these employment decisions. Also relevant to this review is the competition between the employers, the health care organisations.

However in practice, a person seeking rehabilitative therapy services or an employer seeking to employ a rehabilitative therapist will often choose a provider based upon their title. For example, it is important for hospitals to have an occupational therapist on their staff. Therefore, while the services themselves may be substitutable, the competition between the respective classes of providers may be minimal.

This means that there is a separate sub-market for occupational therapy services, that is services provided by a registered occupational therapist.

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<sup>1</sup> section 20

<sup>2</sup> section 3



There is also competition between occupational therapists, in private practice, marketing their services on an individual basis direct to the consumer. There may also be competition between these “businesses” and other “businesses” comprised of unregistered persons providing similar services.

Although some of the services provided by occupational therapists and other registered health professionals, such as physiotherapists, may be substitutable, the extent of competition between these professions is limited. Therefore the Panel considers the different registered professionals to be operating in different markets.

This market is generally local market, as consumers will only travel a limited distance to obtain occupational therapy or rehabilitative therapy services. Consumers will then choose between the substitutable services offered by the different rehabilitative therapy practices in their local area, based on differences such as cost, perceived competence and other factors. The Panel notes the comments made in the University of SA submission, that the market may extend overseas due to the engagement of consultants in South Australia by consumers in other countries. However, the Panel will consider the local market for the purposes of this review.

The market for occupational therapy services has changed since the introduction of the Act in 1974. There is greater substitutability of services now than in the past. The roles and scopes of other professionals and health care providers in the provision of rehabilitative therapy services are continually expanding over time. Further, the children’s market is decreasing and, with an increasing ageing population the demand for occupational therapy services to the aged is increasing. In addition, the employment of occupational therapists in the private sector has increased considerably since the introduction of the Act

### **Training Market**

A requirement of registration is that the applicant have prescribed qualifications. The market for providing occupational therapy training may be affected by the regulations prescribing qualifications and is therefore a market relevant to the review of the *Occupational Therapists Act*.

## 1.3 Restrictions

Restrictions upon competition are of three types:

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

Each of the restrictions identified in the course of this review has been identified in terms of these theoretical types of restrictions.

Such categorisation is useful for determining the impact of the restriction upon competition in the relevant market. For the purposes of this review restrictive provisions have been assessed as trivial, intermediate or serious. This assessment is provisional until the consultation process is complete. There is no definitive means of identifying the correct weight to be ascribed to restrictions. The following, however, is the “rule of thumb” utilised during the course of this review. A trivial restriction upon competition has only a minimal effect upon competition within a market. There is no clear-cut delineation between intermediate and serious restriction upon competition. Generally, however, an intermediate restriction upon competition is a restriction which imposes a substantial cost upon competition. In this context “substantial” indicates other than a minimal effect upon competition. By comparison, a serious restriction is a restriction which prohibits entry or re-entry into a market, or prohibits certain conduct within a market.

## 1.4 Costs

Two categories of cost arise from the restrictions contained in the *Occupational Therapists Act*. Firstly, the restrictions upon registration and re-entry to the profession may cause the supply of occupational therapists to be less than the demand therefor. In this context, restrictions upon conducting education and training may also contribute to a shortage of persons attaining sufficient qualifications to enable them to be registered.

Restricting numbers of occupational therapists may cause the cost of occupational therapy services to rise. This therefore, is a cost upon the community. Similarly, a short-fall in the numbers of occupational therapists may reduce the efficiency and effectiveness of available occupational therapy services. The numbers of persons practising occupational therapy is the result of many factors which are discussed below.

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

## 1.5 Public Benefits

The professional regime established under the *Occupational Therapists Act* achieves significant public benefits. Restrictions upon entry to, and participation in the profession ensure that persons claiming to be registered possess the requisite qualifications and experience to safely and competently fulfil those roles. The provision of professional services is often done in an environment of “information asymmetry” between providers and consumers. Consumers often will judge a professional’s ability to provide a professional service on the basis of their manner and presentation.

The consumer will often lack the knowledge to assess the quality of the service being provided or the knowledge or expertise of the practitioner.<sup>3</sup> In such an environment, Government has a legitimate role in ensuring that professionals meet minimum standards of competency. The public can be confident that a person holding themselves out to possess certain qualifications and expertise does in fact hold this level of qualifications and expertise.

The provision of information to consumers is, therefore, a significant factor in promoting competition. Deregulation of professions, without a concomitant increase in the knowledge of consumers, to enable them to make informed choices regarding service providers, will expose consumers to risks of harm without providing them with the means of avoiding this harm. Systems of registration provide a mechanism for providing a public record of the practitioner within a profession and any restrictions upon their ability to practise. The compilation of such information and its provision to consumers is a significant public benefit.

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

## 1.6 Other States & Territories

The practice of occupational therapy is subject to legislative regulation in Western Australia, Queensland and Northern Territory<sup>4</sup>. This legislation is similarly the subject of review under the Competition Principles Agreement. As at the date of this report no other State has formulated recommendations as to amendments to legislation.

Such legislation has the same objectives as the South Australian Act and many of the same or similar restrictions. All provide for the registration of occupational therapists and confer title protection. All have requirements for registration such as prescribed qualifications and “good fame and character” or similar standard.

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<sup>3</sup> John Webster “Competition Policy and the Professions - The Issues” in the Australian Council of Professions *National Competition Policy and the Professions* at 5

<sup>4</sup> *Occupational Therapists Registration Act 1980 (WA)*; *Occupational Therapists Act 1979 (Qld)*; *Health Practitioners and Allied Professional Act (NT)*

## PART 2: ANALYSIS OF RESTRICTIONS

### 2.1 Title & Practice Protection

Unlike many other health professions, the Act does not specifically reserve the practice of occupational therapy exclusively to occupational therapists.

The Act, under section 20, merely reserves, to persons registered under the Act, the use of the title “occupational therapist” and the use of any name, title or description likely to cause any person to reasonably believe that a person is registered under the Act. This means that an unregistered person may not describe his or her practice as “occupational therapy”.

Title protection is the major purpose of the Act, in fulfilling its public protection objectives. The other provisions and restrictions reinforce the regime of title protection. The purpose of the Act is to protect the public by only allowing competent persons to describe themselves as “occupational therapists”. Title reservation aims at ensuring demarcations recognisable by the public between occupational therapists and unregistered persons.

If title protection were not justified in terms of public benefit, there would be no reason to retain the Act. At present the only Australian States and Territories to retain statutory regulation are South Australia, Queensland, Northern Territory and Western Australia, as well as New Zealand.

#### 2.1.1 Restriction

There may be some indirect practice protection achieved by the Act. The restriction on the use of the title “occupational therapist” creates a barrier to entry to the market for “occupational therapy” services. It may also create a barrier to or restriction on entry to the market for rehabilitative therapy services, due to factors not related to the Act, such as decisions by employers or consumers to use the services of an occupational therapist instead of an unregistered rehabilitative therapist, or other legislation which refers to registered occupational therapists<sup>5</sup>. Where entry to, or conduct within, the market for rehabilitative services is restricted, practice protection is achieved.

The restriction is therefore a serious restriction on competition within the market for rehabilitative therapy services.

#### 2.1.2 Public Benefits

The public benefit achieved by title protection is the confidence conferred on consumers that a particular occupational therapist has qualifications and expertise sufficient, in the opinion of the Board, to render that person competent to provide occupational therapy services. It is the overcoming of “information asymmetry”<sup>6</sup>. This is particularly important in the context of occupational therapy, where consumers will often be vulnerable or “socially disadvantaged”<sup>7</sup>, due to the nature of their illness, age or disability. Occupational therapists often work unsupervised and in remote areas, so the consumer may have no assistance in assessing the competence of the occupational therapist.

<sup>5</sup> For example, *Workers Compensation and Rehabilitation Act 1986 (SA)*

<sup>6</sup> as discussed in part 1.5

<sup>7</sup> OT Australia (SA Branch) submission at 4

Title protection therefore ensures competence and thereby protects the public from risks of harm. In the case of occupational therapy, there is not significant risk of irreversible harm or injury as in the case of other professions, such as dentistry or physiotherapy. However, the Review Panel believes that the risk of harm caused by incompetent practitioners is significant, and that therefore it is necessary that the public are protected by being provided with increased information about a potential rehabilitative therapist, thereby giving the consumer greater choice of provider.

The Board<sup>8</sup> has provided the Panel with a number of examples of the risks of harm that may be caused to a consumer due to occupational therapy services being performed incompetently. Such risks fall into three categories. The first of these is the risk of physical harm, including heart attacks, burns, soft tissue damage and exacerbation of illness or injury, arising from “the incompetent or negligent

- conduct of assessments
- application of therapeutic techniques
- use of therapy equipment
- prescription of activities or occupations
- prescription for equipment or architectural modifications
- modification of work practices or environment”.

The second category given by the Board is the risk of emotional harm, including to exacerbate existing mental health problems, arising from “the incompetent or negligent

- assessment of a client’s risk to themselves or others
- application of therapeutic techniques such as counselling, group work or specialised therapy techniques
- monitoring of changing health status
- maintenance of a physically safe therapy environment”,

More detailed examples of these two types of risks are contained in Appendix 2.

The third category given by the Board is the risk of exploitation, due to the vulnerability of the consumer. Such exploitation may be physical, emotional, sexual or financial and can arise wherever a health professional is in a position of trust.

As well as consumers, government departments, potential employers and other professionals are provided with information about which rehabilitative therapists have the competence to provide occupational therapy services. An important example is that of the WorkCover Corporation, who uses the services of medical experts in the provision of care to injured workers. “Medical expert” is defined in the *Workers Compensation and Rehabilitation Act 1986 (SA)* to include “a registered occupational therapist”<sup>9</sup>. Title protection under the *Occupational Therapists Act* therefore provides WorkCover with an appropriate standard of expert. In its submission, WorkCover points out that it does not see its role “as one of determination of professional provider standards and industry competencies”<sup>10</sup>, and sees the Board as a body with the required expertise to determine such issues.

Title protection, and related registration system, also provides consumers, and indeed other professionals, with a mechanism for complaints against unprofessional and incompetent occupational therapists. This is important where approximately 50% of occupational therapists are employed in the private sector.

<sup>8</sup> Occupational Therapists registration Board of SA submission (18/12/98) at 6 - 7

<sup>9</sup> section 3

<sup>10</sup> WorkCover Corporation submission (17/12/98) at 2

### 2.1.3 Costs

The costs to the public are the costs of registration, which are discussed in part 2.2. These include compliance costs to individual occupational therapists, such as fees for registration, tuition fees and lost income in obtaining required qualifications and costs to maintain competence and a professional standard. These costs are only relevant if they are substantial and passed on to the public by way of increased fees or deter persons from entering the market for occupational therapy services. The Review Panel believes that such compliance costs are minimal.

There may also be costs to the public of administering the Act. These costs are minimal as the Board is funded entirely by registration fees.

The most significant costs of the system of title protection will occur if the supply of rehabilitative therapy services or occupational therapy services is less than the demand, due to the Act's requirements and therefore prices increase or a shortage of providers occurs. The Review Panel received no evidence of either of these scenarios. For example, the Board submitted that

“the registration of occupational therapists has not prevented development of other service providers such as rehabilitation co-ordinators/counsellors, developmental educator and diversional therapists. Nor has the registration of occupational therapists restricted the roles of other workers such as handicraft instructors, activity supervisors or paramedical aides”<sup>11</sup>.

Therefore, the Review Panel concludes that the public benefits of the title protection regime established by the Act outweigh the costs thereof.

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<sup>11</sup> Occupational Therapists Registration Board of SA submission (18/12/98) at 5

### 2.1.4 Alternatives

The Review Panel has considered alternative means to achieve the objectives of title protection. Submissions have been sought on the following alternatives.

#### No Regulation

This leaves open the possibility for the profession to regulate itself, but with no legislative powers or sanctions. Any person may describe themselves as an occupational therapist, subject to laws regarding misrepresentation<sup>12</sup> and misleading and deceptive conduct<sup>13</sup>.

The disciplinary procedures available are those established by the professional association (if any) whereby membership may be cancelled for not complying with standards of the association. In addition there are the laws regarding negligence<sup>14</sup> and consumer protection<sup>15</sup>.

Examples of professions which have successfully used self regulation in the absence of any legislative scheme include accountants and engineers<sup>16</sup>.

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

Other legal remedies which focus on prevention are legislation such as the *Public and Environmental Health Act 1987 (SA)*. While this Act does provide some protection, it is specific to certain areas of practice and is not therefore adequate in itself.

The submissions concur with the Panel's view that this alternative is not sufficient to protect the public. Self-regulation relies upon the establishment of a suitable system by the professional body. At present only 47% of registered occupational therapist are members of OT Australia (SA Branch), the main professional association<sup>17</sup>. Such an association may impose further costs to the consumer, for example by way of membership fees which are substantially higher than registration fees<sup>18</sup>.

Further, this alternative does not provide bodies such as WorkCover with a consistent standard of provider<sup>19</sup>.

#### Co-regulation

This model involves the government monitoring of professional associations, under legislation enabling the associations to set standards for a profession including to accredit professionals. Again, there is no requirement for membership in order to use a particular title, eg "occupational therapist", but only accredited persons may hold out

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<sup>12</sup> contract

<sup>13</sup> *Trade Practices Act 1974 (Cth); Fair Trading Act 1987 (SA)*

<sup>14</sup> common law

<sup>15</sup> *Trade Practices Act; Fair Trading Act*

<sup>16</sup> see The Institute of Engineers website [www.ieaust.org.au](http://www.ieaust.org.au)

<sup>17</sup> Occupational Therapists Registration Board of SA submission (21/1/99)

<sup>18</sup> fees for membership of OT Australia (SA Branch) currently are \$320 per annum

<sup>19</sup> WorkCover submission (15/1/99)

as such, eg “accredited occupational therapist”, “Member of OT Society”, using general legal principles. Alternatively, the legislation could go one step further and reserve the title of “occupational therapist” to members of the association.

Disciplinary procedures are the same as for no or self regulation ie managed by the professional association.

An example of such a system is that established under the *Survey Act 1992 (SA)* to regulate surveyors<sup>20</sup>.

This model effectively transfers responsibility for administering a system of title protection to the professional association. The submissions agree that this alternative is not sufficient to protect the public, for the same or similar reasons as in relation to no regulation.

### **Voluntary Certification**

Under a voluntary licensing or certification model, a government body is established under legislation to administer the scheme. Members of the profession are able to choose whether they wish to be licensed/certified. If they so choose, they must comply with the requirements for licensing and any professional standards established by the legislation. As with the above models, a person is not able to hold out as being licensed under the relevant legislation, unless he or she is so licensed.

If a professional is found to be guilty of “unprofessional conduct” or equivalent, conditions may be placed on their licence, or they may be fined, or their licence suspended or revoked. However, that person is still entitled to practise as an occupational therapist.

The submissions did not support this alternative. The Board<sup>21</sup> argued that this model would create a two tiered system of occupational therapy services, whereby considerable cost to the community could be incurred in educating the public on the difference between licensed and non-licensed occupational therapists.

### **Other States**

In the States and Territory without legislative title protection, namely Victoria, New South Wales, Tasmania and ACT, there is no regulation at all. Many of the submissions argued that there are problems with these systems. However, with no specific complaints mechanism, there are minimal records of complaints against occupational therapists and therefore any harm caused by lack of regulation.

In all of these States, unlike South Australia, there is an independent body to whom complaints can be made in relation to all health providers<sup>22</sup>. This provides some protection to consumers, which cannot be provided at present in South Australia.

### **Conclusion**

The Review Panel concludes that the public benefits of title protection outweigh the costs. In considering the alternatives to the current system, the Panel believes that there must be some legislative restriction on use of the title “occupational therapist”. The model of no or self regulation is not sufficient to protect the public.

<sup>20</sup> see The Institution of Surveyors, Australia Inc website [www.isaust.org.au](http://www.isaust.org.au)

<sup>21</sup> Occupational Therapists Registration Board of SA submission (21/1/99)

<sup>22</sup> Health Complaints Commission (Victoria, Tasmania and ACT); Health Complaints Tribunal (NSW)



The other legislative models of title protection, namely co-regulation and voluntary licensing, provide significant protection to the public. The Panel considers that these options may indeed achieve the objectives of title protection. In fact, little evidence has been seen by the Panel that these models would not do so.

However, the Review Panel does not recommend changing the method of title protection for the following reasons:

1. These alternatives would require the repeal of the current Act and the introduction of new Act to establish the appropriate model. This process in itself would incur considerable costs to the public, whilst achieving little or no benefit by way of increased competitiveness in the market for rehabilitative therapy services.
2. Public opinion is in favour of retaining the current system of title protection. This is based upon submissions received by the Review Panel from occupational therapists, a training provider, a consumer body and WorkCover. There were no submissions received which supported removing the system of registration or replacing it with any of the above or other models.
3. All other health professions in South Australia are regulated by the same system of registration and title protection. The other States which legislatively regulate the occupational therapy professions do so by way of title protection. There is benefit in consistency throughout the State, by providing the public, government departments and other professionals with the same standard throughout the professions.

A consumer, in particular, will find it easier to recognise a registered occupational therapist than a licensed occupational therapists as that is what they are accustomed to in relation to occupational therapists, in other professions and in other States and Territories. Consistency throughout Australia is important for the same reasons and because of the system of mutual recognition and other systems enabling movement between jurisdictions<sup>23</sup>. However, should the other States and Territories decide to repeal their legislation regulating occupational therapy, it may be necessary to reconsider the South Australian position.

4. The main professional association, OT Australia, is not supportive of co-regulation and therefore such a system is unlikely to be successful

Therefore the Review Panel recommends that title protection, as contained in section 20, should be retained

### **Definition of Occupational Therapy Services**

Some of the submissions referred to the issue of the definition of “occupational therapist”<sup>24</sup>. It is considered that this definition may restrict competition by narrowing the field of competent persons able to be registered. There is little public benefit in such a restriction. Further, there is no need for such a definition in the Act to enhance its objectives.

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<sup>23</sup> registration is recognised in many countries including USA, Canada, UK, New Zealand, most European countries and South Africa.

<sup>24</sup> as discussed in part 1.2

**Recommendations**

2. The current definition of “occupational therapist” should be replaced with “a person registered under this Act”.

## **2.2 Registration Requirements**

The registration requirements of the *Occupational Therapists Act* do not, of themselves, create a restriction on competition. However these provisions form a basis for the title protection regime established by the Act, since registration is a requirement to use certain titles protected by the Act.

### **2.2.1 Entitlement to Registration**

A person is entitled to be registered as an occupational therapist under the Act<sup>25</sup> if that person proves to the satisfaction of the Board that he or she meets the following criteria:

- (a) is of good character;
- (b) is competent in the use of the English language;
- (c) holds any of the prescribed qualifications or qualifications obtained in another country which are recognised by the Board;
- (d) is competent in the practice of occupational therapy;  
and has paid the prescribed fee.

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<sup>25</sup> section 11

## *Good Character*

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

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

There may be costs to the community of reducing the numbers of occupational therapists available and thereby increasing the costs of such services. However, as long as the Board only excludes those persons who are potential dangers to public safety, these costs are justified in the public interest.

When interpreting this requirement, the Board is bound by the common law which can be summarised as defining “good character” to include “matters affecting the moral standards, attitudes and qualities of the applicant”<sup>26</sup> in so far as they relate to the applicant’s proposed practice as an occupational therapist.

The “level” of this standard is also relevant. The Board does not need to limit registration to people who are excellent or perfect<sup>27</sup>, as long as the applicant meets the standard expected by the public and the profession.

In addition, the Board’s criteria must be transparent. The appeal processes discussed in part 2.4.2 of this paper help to ensure this. However it is also important that the public and the profession are aware of the standard applied by the Board.

The Panel assessed this restriction as intermediate, and believes that the benefits outweigh the costs.

The alternative is a list of criteria such as medically fit, no criminal convictions. However, set criteria with no discretion given to the Board may have the effect of excluding otherwise competent or proper persons from practice or allowing others, who may have behaved improperly but against whom a criminal conviction has not been obtained for some reason, to practise occupational therapy.

All other Australian States and Territories with legislation require a similar standard for registration, for example “good character and reputation”<sup>28</sup> and “good fame and character and medically fit to practise”<sup>29</sup>.

All other South Australian legislation<sup>30</sup> providing for the registration of health professionals has the “fit and proper person” standard or the “good fame and character” standard, which is likely to be amended to the “fit and proper” standard.

Submissions were sought as to whether the “good character” standard” should be changed. All submissions addressing this issue said that it should be changed to the “fit and proper” person standard, to enhance consistency throughout South Australia.

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<sup>26</sup> per Walsh JA, *Ex parte Tziniolis; re Medical Practitioners Act* (1966) 84 WN 275 at p277

<sup>27</sup> *Wright v Teachers Registration Board* (1983) 111 LSJS 177

<sup>28</sup> Western Australian legislation.

<sup>29</sup> Queensland and NT legislation

<sup>30</sup> for example, *Physiotherapists Act 1991*

While in practice there may be little difference between the two standards, the “fit and proper person” standard may be seen to be more objective as it relates more to specific competence, fitness and propriety to practice, rather than a general good character. Further, a consistency in standards assists the public in understanding the standard required for registration.

Therefore the Panel recommends that the “fit and proper person” requirement be adopted in the Act.

One submission<sup>31</sup> recommended that there be a requirement that a person is “fit and proper” upon renewing their registration. This would simply enable the Board to require registered persons to state upon applying to reregister whether in the previous year they were convicted of any criminal offences, became bankrupt or provide similar information. This allows the Board to refuse to reregister or to impose conditions on registration on the grounds that a person is no longer fit and proper, rather than taking disciplinary action against that person when and if the Board discovers such conduct.

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

**Recommendations:**

3. The requirement, in section 11(a), that a person be “of good character” be changed to a requirement that a person be “a fit and proper person to be so registered”.
4. A registered person should be required to satisfy the Board that they are (still) a “fit and proper” person in order for that person’s registration to be renewed.

**Competent in the use of the English language**

This requirement is a restriction upon entry to the occupational therapy profession. Whether it is a justifiable restriction will depend on whether it is necessary to protect the public, and if so, whether the other registration requirements ensure that an applicant is competent in the use of the English language. For example, the qualifications required may include examinations in the English language.

Submissions were sought on whether this requirement is a justifiable restriction. All submissions on this issue believed that this requirement is necessary to protect the public, due to for example the necessity of “good interpersonal skills”<sup>32</sup>.

The Panel notes that the legislation in the other States and Territories does not have this requirement and neither does the legislation regulating the other health professions in South Australia.

The Review Panel acknowledges the arguments of the submissions, but believes that the other requirements are sufficient to protect the public, without the need for a separate requirement that the person be competent in the use of the English language. In most instances, the applicant will be seen to have a good command of the English language after obtaining the prescribed qualifications or undertaking the NOOSR examination.

<sup>31</sup> Occupational Therapists Registration Board of SA submission (18/12/98)

<sup>32</sup> North Eastern Options Coordination submission

## **Recommendations**

5. The requirement that a registered person be competent in the use of the English language be removed.

## **Qualifications**

Criteria for registration based upon objective standards of competency, while being restrictions upon entering a profession, may be justifiable in terms of protecting the public where there is a risk of harm to the public from persons who are not competent to provide certain services. A threshold of risk which will justify registration requirements across all professions cannot be quantified as the risks associated with "holding out" in different professions cannot be compared in this manner. The public benefits of registration must be weighed against the costs of registration peculiar to that profession. In relation to the services provided by occupational therapists, this degree of risk is significant.

Therefore persons holding themselves out as registered persons should be competent in the delivery of occupational therapy services. Obtaining a qualification which, in the opinion of the Board, is necessary to ensure competency is an objective criteria for attaining registration.

Regulation 4 prescribes the qualifications for registration. These include the completion of one of the courses listed in Schedule 1 (which includes interstate courses). The regulations are made by the Governor upon the recommendation of the Board. Therefore the Board has power to at least influence the required qualifications. In addition the Board is empowered to recognise qualifications obtained overseas.

The requirement for the completion of a course is an intermediate restriction on competition, the costs of which may be justified if the content of the course is necessary for the applicant to attain the competency required to practise occupational therapy.

In addition to limiting the practice of occupational therapy to competent practitioners, the number of people who may attain the necessary qualifications is limited by the numbers of places in the relevant courses. The numbers of places in a teaching institution is dependant upon funding to those institutions.

Other restrictions upon the numbers of occupational therapists include the availability of clinical practice placements and educational standards required to attend the teaching institution and the cost of attending such courses.

There is public benefit in the Board, being a body with specific knowledge of the occupational therapy profession, being involved in the process of prescribing qualifications required for registration. The Board is in a position to evaluate which training courses would sufficiently qualify a person to be competent in occupational therapy.

Restricting the number of registered occupational therapists practising may lead to anti-competitive costs if the demand therefor exceeds the supply or the costs of occupational therapy services thereby increase. No evidence was received by the Panel of there being a shortage of occupational therapists or the costs thereof being too high. There are, however, compliance costs of obtaining the necessary qualifications, including tuition fees and lost income.

The submissions on this issue agreed that the restrictions on qualifications are necessary to ensure competence and therefore are justified in the public interest.

The prescribing of qualifications required for registration under the Act is, in addition, a restriction on entry to and conduct within the market for occupational therapy training courses. However, as there is public benefit in the registration regime established by the Act, this restriction confers a net benefit to the public.

Anti-competitive costs in the training market will only arise if restricting the number of training courses available substantially reduces the number of qualified occupational therapy professionals in the market. The Panel notes that there is currently only one training provider in South Australia. However, the Panel has no evidence of any other potential providers been barred from entering the market by the prescribing of qualifications. The public would benefit from an increase providers in the market.

The Review Panel concludes the benefits outweigh the cost of having set qualifications to ensure competence of registered persons.

There are no viable alternatives to prescribing qualifications (and experience) required for registration which adequately meet the objective of establishing the competency of a potential occupational therapist, within the current regime of title protection. A possible alternative to prescribing qualifications and all other requirements for registration could be a model where there are no requirements to register, other than the completion of a form and the payment of an administration fee. The Board, or other body, would then have power to deregister in the case of incompetence, unprofessional conduct etc. However, this would not sufficiently protect the public by minimising the risk of harm. Other alternatives are discussed in part 2.1.4 in relation to title and practice protection.

The Review Panel concludes that there are no alternatives which adequately protect the public.

However, the Review Panel considers that if “prescribed qualifications” were to be replaced with “qualifications approved by the Board”, this could increase flexibility for the training market and assist new training providers to enter the market and that therefore this change should be made. However, as this is a discretionary function, there should be an appeal against such decisions. Further, the Board should publish a list of approved qualifications and experience, along with guidelines<sup>33</sup> as to how it makes these decisions.

<b>Recommendations:</b>
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<sup>33</sup> see part 2.4.2

6. The requirement for “prescribed qualifications and experience” in section 11(c) should be amended to “qualifications and experienced approved by the Board”.
7. The Board should publish and make available to the public and registered persons a list of approved qualifications in the *South Australian Government Gazette*.
8. There should be an appeal from decisions of the Board to approve or to refuse to approve certain qualifications and experience.

### **Competent in the Practice of Occupational Therapy**

Requiring an applicant to be competent in the practice of occupational therapy confers obvious public benefit. However, the qualification requirements also purport to ensure competency. A broad requirement that a person be competent places a burden on the applicant to prove competency which may be difficult if that person is a recent graduate and therefore has limited experience. A “fit and proper person” standard as discussed above also contains notions of competence. This is a trivial restriction.

All submissions on this issues agreed that competence is an important requirement and most thought it should remain as a specific requirement for registration. The Review Panel agrees that incompetent persons should not be entitle to be registered as occupational therapists. However, the Panel does not believe that it is necessary for an additional “competence” requirement, as this is provided for elsewhere in the Act.

Neither interstate occupational therapy legislation nor other South Australian health professional legislation contains such a requirement.

The Review Panel therefore concludes that, despite the fact that this is only a trivial restriction, it is superfluous and should be removed.

### **Recommendations**

9. The requirement, in section 11(d), that a registered person be “competent in the practice of occupational therapy” should be removed.

## **Fees**

An application fee may constitute a restriction if it dissuades entry to a profession or is substantial and passed on to consumers.

The fees for registration and renewal of registration are prescribed in regulations 5 and 6<sup>34</sup>. The current annual practice fee for occupational therapists in South Australia is \$130 and the current renewal fee is \$120.

A comparison of interstate fees is contained in Appendix 5. The differences in the registration fees in different jurisdictions reflect the differences in the income and expenditure of the regulatory authorities in each jurisdiction, the priorities of the regulatory body and the attitudes of the community to regulation. For example, in South Australia, the Board is completely self-funded, unlike in most other States.

There were no submissions received which suggested that the fees constituted a barrier to entry to the occupational therapy profession. Therefore the Panel considers the fees to constitute a trivial restriction on competition.

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

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

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

The Review Panel notes that it may be necessary to vary these fees from time to time due to changes in income and expenditure of the Board. Therefore it may be the Panel believes that it would be in the public benefit for the Board to be able to set these fees itself without the need for the regulations to be changed.

This would bring the Act into line with other South Australian legislation regulating the health professions.

### **Recommendations**

10. The Board should be empowered to set the fees for registration and renewal of registration.

## **2.2.2 Limited registration**

Section 11a enables limited registration where the applicant for registration lacks the necessary qualifications or does not fulfil the other requirements prescribed by the Act, to enable the applicant to obtain the experience and skill required for full registration; to

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<sup>34</sup> see Appendix 4



teach, undertake research or study; or if, in the Board's opinion, the applicant's registration is in the public interest.

The Board may impose restrictions upon the places and times in which a registered person may practise occupational therapy, limit the kind of occupational therapy in which that person may practise, limit the period of registration, or impose any other condition as the Board thinks fit. This provision enables the Board to place a restriction upon a person's conduct within the occupational therapy profession.

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

This section is mainly utilised by the Board to enable persons trained overseas to practise while waiting to undertake the NOOSR examination required for registration, which is only available once every six months. It is also used to allow practitioners who have not practised for some time to update their skills, in which case a supervision condition is usually imposed.

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

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

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

### 2.2.3 Restriction of movement of occupational therapists between jurisdictions

Systems of registration may inhibit movement of occupational therapists between jurisdictions, where occupational therapists registered in another jurisdiction are unable to register in South Australia. Such a restriction reduces the pool of occupational therapists within South Australia and thereby reduces the level of competition between occupational therapists.

The operation of the system of Mutual Recognition established under the *Mutual Recognition Act 1992 (Commonwealth)* may limit any restriction imposed by the registration requirements. Mutual Recognition enables occupational therapists in equivalent occupations interstate to be registered in South Australia. The object of the scheme is, essentially, that if an occupational therapist satisfies the requirements for registration interstate that person will be registered in South Australia without further training. A person registered pursuant to this regime is subject to the same laws regarding practice as other occupational therapists registered in South Australia.

The *Mutual Recognition Act* (sub-section 20(5)) does preserve the ability of the Board to impose conditions upon practice provided these conditions do not arise from the fact that the applicant is registered pursuant to the Mutual Recognition Scheme. While the scheme alleviates constraints upon the registration of occupational therapists from interstate, the scheme does not, therefore, alter the restrictions embodied within the conditions imposed by the Board upon practice. The impact of these conditions upon competition are analysed above.

Of course, where a person, who has been practising occupational therapy in a State which does not require registration, applies for registration in South Australia the mutual recognition scheme does not apply. In this case, that person's qualifications may come within the prescribed qualifications in Schedule 1 which include interstate qualifications. If this is not the case, the applicant will not qualify for full registration. Therefore the system of registration in South Australia is a restriction on interstate applicants entering the market. This is therefore an intermediate restriction on competition.

Submissions on this issue<sup>35</sup> believed that the movement of occupational therapists between jurisdictions was not restricted unjustifiably, due to the operation of mutual recognition and limited registration. The Review Panel agrees, and notes that this restriction is justified because the registration requirements are justified in the public interest.

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<sup>35</sup> OT Australia (SA Branch); Occupational Therapists Registration Board of SA (18/12/98); University of SA (8/12/98)

## 2.3 Unprofessional Conduct

The Board is empowered by the Act, under section 14, to discipline an occupational therapist if, after conducting an inquiry, the Board is satisfied that the occupational therapist is guilty of unprofessional conduct. Such inquiry must be initiated by the Board upon receipt of a complaint from the Registrar, the Minister or the Australian Association of Occupational Therapists South Australian Division Incorporated. The Panel notes that there is no provision for the Board to refuse to inquire into a complaint if it considers it to be frivolous or vexatious. Unlike other Acts, there is no provision for a consumer to complain directly to the Board. Presumably vexatious complaints will be dismissed prior to being considered by the Board.

Upon the Board finding an occupational therapist guilty of unprofessional conduct, it may reprimand the occupational therapist, impose a fine not exceeding \$5,000, or may suspend, cancel or impose conditions in relation to the occupational therapist's registration.

The Board's powers to discipline are potentially restrictions upon the conduct of occupational therapists.

Central to the restrictions, therefore, is the Board's interpretation of "unprofessional conduct". There is no definition of "unprofessional conduct" in the Act, unlike other Acts such as the *Dentists Act 1984*. However the Board uses the following as a guide<sup>36</sup>:

"Unprofessional conduct is not necessarily limited to conduct which is 'disgraceful or dishonourable', in the ordinary sense of those terms. It includes conduct which may reasonably be held to violate, or to fall short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency."<sup>37</sup>

Restrictions upon conduct, and hence upon competition, arising from the disciplinary structure of the Act, will only give rise to unjustifiable anti-competitive costs if inappropriate standards of "unprofessional conduct" are applied. The criteria used by the Board are standards expected by the profession. The public's expectations should also be considered. It may be possible that the standard required by the profession is different from that required by the public<sup>38</sup>. For example, the public may require a lower standard of service at a lower cost; the profession may require advertising restrictions that may preserve the profession rather than protect the public. However, the Review Panel has not seen any evidence that the Board has applied inappropriate, or too high, standards of unprofessional conduct<sup>39</sup>. Therefore the restriction is trivial.

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

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<sup>36</sup> Occupational Therapists Registration Board of South Australia *Guidelines on Standards of Professional Conduct & Disciplinary Procedures* (March 1995)

<sup>37</sup> at page 1 - from judgement of Bray CJ, 9 September 1975

<sup>38</sup> see also discussion on "good character" in part 2.1.1

<sup>39</sup> The Board has not conducted any disciplinary inquiries in the period 30/6/95 - 30/6/98

### **Code of Professional Ethics & Guidelines**

Sub-Section 22(c) provides that the Governor may, upon recommendation of the Board, make regulations that prescribe a Code of Professional Ethics to be observed by all occupational therapists. There is currently no such Code prescribed in the regulations. However the power to do so is a potential restriction upon competition.

The argument for having a Code in the regulations is that it will be more transparent than the current situation in relation to the Guidelines (see discussion below) and will have the check mechanism of the Governor's "approval". However any Code contained in the regulations is clearly more difficult to change from time to time as changes in the profession occur, and allows the Board less discretion in applying a standard of unprofessional conduct which may not be exhaustive in its definition.

The Board has prepared *Guidelines on Standards of Professional Conduct and Disciplinary Procedures* (March 1995) ("the Guidelines"). These Guidelines are not provided for in the Act and are not enforceable in themselves. Therefore, they are not within the terms of reference of this review. However, the Guidelines are used by the Board as a guide "to the profession of the principles that will be used in its decisions relating to complaints of unprofessional conduct"<sup>40</sup>. As such, the Guidelines are relevant to the review, in particular in determining the scope of the Board's powers in relation to unprofessional conduct.

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

The Review Panel believes that to increase the transparency of the Board's interpretation of "unprofessional conduct", these Guidelines should be enforceable. However, this increases the risk of the Board making restrictive decisions. The approval of an independent party is important and therefore the Review Panel concludes that any such Guidelines should be approved by the Minister, with the Board having power to prepare such Guidelines. The Guidelines should be referred to as a "Code of Conduct" to reflect the public protection issues.

Submissions were also sought on whether consumers should be able to lay a complaint before the Board. The submissions<sup>41</sup> were consistent in their belief that consumers should have such a right. The Board's submission pointed out that in the case where the registrar makes a complaint on behalf of a consumer, then the Registrar and another Board member are responsible for the complaint, and therefore the Board has one less member able to hear the complaint. Further, there is less opportunity for transparency of decisions. In other South Australian and interstate legislation, a consumer has this right.

Therefore the Review Panel concludes that a consumer should be entitled to make a complaint to the Board. However, the Board should be able to refuse to heard a complaint if it is frivolous or vexatious to minimise any additional burden on the Board.

<b>Recommendations:</b>
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<sup>40</sup> Guidelines, page 1

<sup>41</sup> OT Australia (SA Branch); Occupational Therapists Registration Board of SA (18/12/98); Council on the Ageing (15/12/98)

11. The definition of “unprofessional conduct” should be inserted into the Act, and should read - “‘unprofessional conduct’ includes:
  - (a) improper or unethical conduct in relation to the practice of occupational therapy; and
  - (b) incompetence or negligence in relation to the practice of occupational therapy; and
  - (c) conduct in contravention of a Code of Conduct approved by the Minister from time to time.”
12. The functions of the Board should include to prepare a Code of Conduct.
13. The approved Code of Conduct should be published in the *South Australian Government Gazette* and a copy thereof provided to all registered occupational therapists.
14. The power to make regulations prescribing a Code of Professional Ethics should be removed.
15. A complaint alleging unprofessional conduct on the part of an occupational therapist should be able to be laid by a member of the public.
16. The Board should be empowered to refuse to inquire into the subject matter of a complaint alleging unprofessional conduct if it considers the complaint to be frivolous or vexatious.

### Advertising

The Guidelines contain provisions purporting to restrict advertising. For example, they prohibit false, misleading or deceptive advertisements<sup>42</sup>. The cost of any advertising restriction is generally to potentially reduce the information available to consumers. This type of restriction is clearly in the public benefit and, arguably, within the meaning of “unprofessional conduct”. The Review Panel believes the benefits to the public of this type of advertising restriction outweigh the costs.

Another type of advertising prohibited by the Guidelines is that which brings the profession into disrepute<sup>43</sup>. This type of restriction is not justifiable on public benefit grounds, as any benefit is conferred on the profession only and as such does not outweigh the cost.

The alternatives to the Act restricting advertising is the reliance on the *Trade Practices Act* and the *Fair Trading Act*, which prohibit misleading and deceptive conduct. The submissions are divided on this issue. Some argue that there is benefit to the public in having a body with specific knowledge of the profession be responsible for this matter and that the Board is more accessible to the public and can act more quickly<sup>44</sup>. However others believed that the Board should not have power to discipline occupational therapists in relation to advertising at all, because the alternatives were adequate. One submission<sup>45</sup> pointed out that bodies such as OT Australia could assist consumers (and other professionals) to obtain redress in the case where the Board does not have power over advertising.

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<sup>42</sup> section 2.6.1(b)

<sup>43</sup> section 2.6.1(b)

<sup>44</sup> for example Occupational Therapists Registration Board of SA (18/12/98); OT Australia (SA Branch)

<sup>45</sup> Therapy Solutions - Northern Domiciliary Care

The Panel is of the opinion that the alternatives are sufficient to protect the public and that neither the Act nor the Code of Conduct should deal with advertising.

### Recommendations

17. Any Code of Conduct containing advertising restrictions should not be approved.

## 2.4 The Occupational Therapists Registration Board

### 2.4.1 Functions of the Board

Section 4 of the Act establishes the Occupational Therapists Registration Board of South Australia. Unlike other Acts which regulate the health professions, the Act does not separately prescribe the functions of the Board.

However, the Board is responsible for the registration of occupational therapists, administration of the Act, making recommendations to the Governor in relation to the making of regulations and discipline under the Act. As an administrative and disciplinary body, it is possible for the Board to create and impose restrictions upon competition in the occupational therapy profession. These functions, as discussed above, have the potential to enable the Board to restrict entry into and participation within the occupational therapy profession.

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

The Act provides no specific limitation to the Board's powers, as do other Acts. For example the *Chiropractors Act 1991* provides that the "Board must exercise its functions with a view to achieving and maintaining professional standards of competence and conduct in the practice of chiropractic". Even this limitation may not go far enough in that it fails to mention the Board's main function namely to protect the public. This, together with the legislative safeguards discussed below, would limit the potential of the Board to exercise its functions in a restrictive manner.

Submissions were sought as to whether the Act should list the Board's functions and limit its exercise of these functions. It was agreed that "the Act should be clear on the functions of the Board, particularly its role in the protection of the public with regard to standards of occupational therapy"<sup>46</sup>. The Review Panel agrees.

### Recommendations

18. The functions of the Board should be inserted into the Act, and this section should read:

- "(1) The Board is responsible for:-
- (a) the registration and professional discipline of occupational therapists;
  - (b) exercising a general oversight over the standards of occupational therapy practice (including the preparation of a Code of Conduct);

<sup>46</sup> Council on the Ageing submission (15/12/98) at 1

- (c) monitoring the standard of courses of instruction and training available to:-
  - (i) those seeking registration as occupational therapists ; and
  - (ii) registered occupational therapists seeking to maintain and improve their skills in the practice of occupational therapy, and consulting with educational authorities in relation to the establishment, maintenance and improvement of such courses; and
- (d) exercising the other functions assigned to it by or under this Act.

(2) The Board must exercise its functions under this Act with a view to protecting the public by achieving and maintaining professional appropriate standards of competence and conduct in the practice of occupational therapy

### **Mental or physical unfitness**

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

Section 14a empowers the Board to make inquiries into allegations (on complaint) that a registered person is mentally or physically unfit to practise occupational therapy. If the Board is then satisfied that the person is mentally or physically unfit to practise occupational therapy at all or on an unrestricted basis, it may impose conditions on, suspend or cancel that person's registration.

The ability to impose conditions on, suspend or cancel registration is a restriction on a person's ability to practise occupational therapy. This is a trivial restriction.

There is obvious public benefit in a body being able to restrict the practice of persons who are not fit to practise occupational therapy. This is an extension of the standard required upon entry to the market. As with those requirements, the Board must consider the registered person's competence and capacity. Without the power to maintain a continuing standard of competence, the Board's, the public benefit of the registration standard is reduced.

As long as the Board uses objective standards of fitness, the anti-competitive cost is minimal. The legislative safeguards discussed in part 2.4.2 also help to minimise any potential anti-competitive cost.

There are no alternatives to this restriction which adequately protect the public.

## **2.4.2 Legislative Safeguards**

### **Membership and Proceedings**

Provisions regulating the membership and proceedings of the Board are legislative safeguards upon the use of the powers of the Board to restrict competition. The membership of the Board is set out in section 5 of the Act. This is relevant to the review as a Board with balanced occupational therapist / non-occupational therapist membership is perhaps less likely to be able to achieve anti-competitive market design outcomes through the use of powers ascribed to the Board. The Board has four members who are occupational therapists, one medical practitioner, one legal practitioner and one person who is none of the above.

The Act does not specifically provide for a consumer representative on the Board, but in practice consumers will be represented by the non-specified member.

Two of the occupational therapists on the Board are nominated by the Australian Association of Occupational Therapists South Australian Division Incorporated, which is an association whose purpose is to represent the interests of occupational therapists and of which membership is not compulsory. A more appropriate method of selection to minimise the potential for restrictive decisions may be to provide that these two occupational therapists be nominated by the Minister also or that they be elected by occupational therapists.

Submissions were sought on the membership of the Board. In general the submissions agreed that the Act should be clear as to a consumer representative on the Board. The Review Panel agrees. In general, the submissions supported the election (by a majority of occupational therapists) of the three occupational therapist members (not including the member nominated by the University of SA).

The Board<sup>47</sup> suggested that the medical practitioner member be replaced by “a person, nominated by the Minister, with experience and expertise in another health profession”. The Review Panel agrees that this would be a more flexible approach and potentially bring a greater depth of experience to the Board. The reason for having a medical practitioner on the Board is not clear, but is likely to be a standard approach when the Act was introduced, due to a belief that only a medical practitioner has the necessary expertise. The Panel believes that this is no longer necessary as any other registered health professional, with appropriate expertise in the Minister’s opinion, will have the qualities necessary to act as a Board member. In the occasional case that a medial opinion is required, that may be obtained in any event.

The Board also questioned the need for the presiding officer to be the legal practitioner, and suggested that the presiding officer be elected by the Board members. The Review Panel agrees that this selection process is more appropriate.

### **Recommendations**

19. The membership of the Board should be:
  - (a) one legal practitioner nominated by the Minister;
  - (b) one person nominated by the Minister with experience and expertise in another registered health profession;
  - (c) three occupational therapists elected by a majority of occupational therapists;
  - (d) one occupational therapist nominated by the Council of the University of South Australia;
  - (e) one person nominated by the Minister to represent the interests of persons receiving occupational therapy services.
20. The presiding officer should be elected by the Board.

Provisions regulating the terms and conditions of office of Board members (section 6), and the proceedings of the Board (section 7) are additional legislative safeguards upon the use of the powers of the Board to restrict competition.

<sup>47</sup> Occupational Therapists Registration Board of SA submission (18/12/98) at 19



Section 15 provides further legislative safeguards against the Board using its powers to restrict competition by providing for the procedure in relation to an inquiry.

However, the Panel notes that the Act does not state that upon the hearing of proceedings the Board shall act according to equity, good conscience and the substantial merits of the case<sup>48</sup> and that only 7 days notice of hearings is required. In addition there is no requirement for a Board member to disclose an interest in a matter under consideration. The Review Panel recommends that, to enhance the protection to the public, the Act should be amended accordingly.

### **Recommendations**

21. When conducting an inquiry, the Board should act according to equity, good conscience and the substantial merits of the case.
22. A Board member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board should disclose such an interest and should be disqualified from participating in the Board's consideration of such matter.
23. The requirement for 7 days notice of hearings should be amended to 14 days notice.

### **Appeals mechanism**

Section 18 of the Act enables appeals to the Supreme Court against any decisions or order of the Board in the exercise or purported exercise of its powers or functions under the Act.

The powers of the Supreme Court in relation to an appeal from a decision of the Board are set out in section 18(3). These powers are to:

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

Appealing an unfavourable decision to the Supreme Court is a costly and time consuming exercise both for the Board and the occupational therapist. This means that the appeals safeguard may not be as efficient in practice as it could be. Unfortunately there is little alternative in the current judicial structure, other than using the mechanism of the Administrative and Disciplinary Division of the District Court.

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

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<sup>48</sup> for example the *Dentists Act 1984* section 16(3)

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

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

**Recommendations:**

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

***Other Safeguards***

As discussed above, the Board exercises discretionary functions in a number of situations, such as deciding on whether a person is “fit and proper” to be registered or a person is “medically or physically unfit” or is guilty of “unprofessional conduct”. In relation to unprofessional conduct decisions, the Board has prepared *Guidelines on Standards of Professional Conduct and Disciplinary Procedures*, as discussed above, to explain its decision making procedure<sup>49</sup>. The Review Panel believes that a similar set of guidelines in relation to all discretionary decisions would assist in promoting objective criteria and hence transparency of the Board’s decisions. This should not be a legislative requirement at this stage.

**Recommendations:**

25. The Board should publish and make available to the public and the profession guidelines on:

- (a) Registration criteria, including reregistration criteria;
- (b) Criteria for mental or physical incapacity;
- (c) Unprofessional Conduct (in the absence of an approved Code of Conduct).

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

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<sup>49</sup> The Panel notes that the Board also has *Guidelines on Registration* but argues that these should be more detailed, as they do not currently contain decision making criteria.

## PART 3: ADMINISTRATIVE REQUIREMENTS

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

- Section 9**           The Registrar must keep a register of occupational therapists which must be kept up to date and be available for inspection.
- Section 10(3)**      The Board must keep proper accounts of its financial affairs.
- Section 12**           An application for renewal of registration must be made in the prescribed manner and form. The form is set out in Schedule 2 to the regulations. An applicant must, if the Board so requires, furnish the Board with such information, papers or documents as it specifies and verify any information by statutory declaration.
- Section 14b**         Medical practitioners are required to report to the Board an illness of a occupational therapist which has resulted in or is likely to result in mental or physical incapacity stating the reasons for his or her opinion, the views of any other medical practitioner and other prescribed information, which is set out in regulation 9.

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

Section 9 is necessary for the Board to administer the Act and maintain accurate records of registered persons. The burden on the Board is minimal.

Section 10(3) is a common provision and is necessary to ensure accountability of the Board. The burden on the Board is not significant, as it is general business practice to keep accounts of financial affairs.

Section 12 is necessary for the Board to obtain the relevant information to administer the Act, in particular the requirements for registration, to ensure competence and the necessity for accurate records. The burden on the registered person is not significant.

Section 14b is common to the health professions and is necessary to enable the Board to enforce section 14a, where a registered person may be mentally or physically unfit to practise occupational therapy. The burden on the medical practitioner is to forward the required information, which is not significant.

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



## PART 4: CONCLUSION

### ***4.1 Conclusions***

#### ***Restrictions***

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

#### ***Public Benefits***

The system of title protection established by the *Occupational Therapists Act* achieves significant public benefit. The public benefit conferred by the Act is the protection of the public from potential harm by incompetent occupational therapists. It provides the public with confidence that registered occupational therapists have appropriate qualifications and with information about a particular occupational therapist's qualifications, expertise, and the results of any Board decisions against that person.

#### ***Costs***

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

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

Subject to the recommendations listed below, the Review Panel assesses that the public benefits of the restrictions contained in the *Occupational Therapists Act* outweigh the costs of the restrictions.

#### ***Alternatives***

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

Such alternatives are:

1. Consumer protection legislation such as the *Trade Practices Act* and the *Fair Trading Act*;
2. Protection under the common law, such as claims in negligence, breach of contract and misrepresentation;
3. Public health legislation, such as the *Public and Environmental Health Act 1987*.
4. Corporations Law;
5. Self - regulation (in conjunction with the above);
6. Co-regulation;
7. Voluntary licensing;

The Review Panel has concluded that these alternatives may or may not be sufficient to protect the public, but that it is not desirable in the public interest that the objectives of the Act be achieved, at this time, by means other than legislative restrictions on the occupational therapy profession.

## ***4.2 Recommendations***

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

### ***Legislative Changes***

1. The objects section of the Act should be amended to state “An Act to protect the public by providing for the Registration of Occupational Therapists.....”
2. The current definition of “occupational therapist” should be replaced with “a person registered under this Act”.
3. The requirement, in section 11(a), that a person be “of good character” be changed to a requirement that a person be “a fit and proper person to be so registered”.
4. A registered person should be required to satisfy the Board that they are (still) a “fit and proper” person in order for that person’s registration to be renewed.
5. The requirement that a registered person be competent in the use of the English language be removed.

6. The requirement for “prescribed qualifications and experience” in section 11(c) should be amended to “qualifications and experienced approved by the Board”.
7. The Board should publish and make available to the public and registered persons a list of approved qualifications in the *South Australian Government Gazette*.
8. There should be an appeal from decisions of the Board to approve or to refuse to approve certain qualifications and experience.
9. The requirement, in section 11(d), that a registered person be “competent in the practice of occupational therapy” should be removed.
10. The Board should be empowered to set the fees for registration and renewal of registration.
11. The definition of “unprofessional conduct” should be inserted into the Act, and should read - “unprofessional conduct’ includes:
  - (a) improper or unethical conduct in relation to the practice of occupational therapy; and
  - (b) incompetence or negligence in relation to the practice of occupational therapy; and
  - (c) conduct in contravention of a Code of Conduct approved by the Minister from time to time.”
12. The functions of the Board should include to prepare a Code of Conduct.
13. The approved Code of Conduct should be published in the *South Australian Government Gazette* and a copy thereof provided to all registered occupational therapists.
14. The power to make regulations prescribing a Code of Professional Ethics should be removed.
15. A complaint alleging unprofessional conduct on the part of an occupational therapist should be able to be laid by a member of the public.
16. The Board should be empowered to refuse to inquire into the subject matter of a complaint alleging unprofessional conduct if it considers the complaint to be frivolous or vexatious.
18. The functions of the Board should be inserted into the Act, and this section should read:
  - “(1) The Board is responsible for:-
    - (a) the registration and professional discipline of occupational therapists;
    - (b) exercising a general oversight over the standards of occupational therapy practice (including the preparation of a Code of Conduct);
    - (c) monitoring the standard of courses of instruction and training available to:-
      - (i) those seeking registration as occupational therapists ; and
      - (ii) registered occupational therapists seeking to maintain and improve their skills in the practice of occupational therapy, and consulting with educational authorities in relation to the establishment, maintenance and improvement of such courses; and
    - (d) exercising the other functions assigned to it by or under this Act.

- (2) The Board must exercise its functions under this Act with a view to protecting the public by achieving and maintaining professional appropriate standards of competence and conduct in the practice of occupational therapy
19. The membership of the Board should be:
- (a) one legal practitioner nominated by the Minister;
  - (b) one person nominated by the Minister with experience and expertise in another registered health profession;
  - (c) three occupational therapists elected by a majority of occupational therapists;
  - (d) one occupational therapist nominated by the Council of the University of South Australia;
  - (e) one person nominated by the Minister to represent the interests of persons receiving occupational therapy services.
20. The presiding officer should be elected by the Board.
21. When conducting an inquiry, the Board should act according to equity, good conscience and the substantial merits of the case.
22. A Board member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board should disclose such an interest and should be disqualified from participating in the Board's consideration of such matter.
23. The requirement for 7 days notice of hearings should be amended to 14 days notice.
24. References to the Supreme Court in the Act should be amended to "the Administrative and Disciplinary Division of the District Court".

### ***General Recommendations***

17. Any Code of Conduct containing advertising restrictions should not be approved.
25. The Board should publish and make available to the public and the profession guidelines on:
- (a) Registration criteria, including reregistration criteria;
  - (b) Criteria for mental or physical incapacity;
  - (c) Unprofessional Conduct (in the absence of an approved Code of Conduct).





## **PART 5: APPENDICES**

### **APPENDIX 1**

#### **TERMS OF REFERENCE**

##### **SUMMARY**

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

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

The *Occupational Therapists Act 1974* will be examined during the legislative review in accordance with the obligations contained in Clause 5 of the Agreement. Regulations enacted under the *Occupational Therapists Act 1974* will be examined concurrently.

##### **REVIEW PANEL**

Richard Deyell: Department of Human Services (Chair)

Peter Martin: Registrar, Occupational Therapists Registration Board of South Australia

Jane Richards: Solicitor, Competition Policy Review Team

##### **OBJECTIVES OF THE REVIEW**

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

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

## ISSUES TO BE ADDRESSED

1. Clarify the objectives of the *Occupational Therapists Act 1974*, including the identification of the public benefit of the Act, and provide assessment of the importance of these objectives to the community.
2. Identify restrictions to competition contained in the Act, regulations made under the Act, and any relevant Codes of Practice:

*2.1 describe the theoretical nature of each restriction (eg: barrier to entry, restriction to competitive conduct within the market, discrimination between market participants)*

2.2 identify the markets upon which each restriction impacts

2.3 provide initial categorisation of each restriction (ie: trivial, intermediate or serious)

3. Analyse and describe the likely effects of these restrictions on competition in the relevant markets and on the economy generally:

3.1 what are the practical effects of each restriction on the market ?

3.2 assign a weighting to the effect of each restriction in the market

3.3 assess what is the relative importance of each restriction in a particular market to the economy as a whole

4. Assess and balance the costs and the benefits of the restriction.
5. Where the restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means for achieving the objectives of the *Occupational Therapists Act 1974*, including non-legislative approaches.
6. Consider whether any licensing, reporting or other administrative procedures are unnecessary or impose a burden on any person.

## CONSULTATION

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

## REPORT

*The Report to the Minister will contain:*

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

## APPENDIX 2

### OCCUPATIONAL THERAPY PRACTICE AND SUBSTITUTABILITY

#### SUBSTITUTABILITY OF WORK

it is not assumed that the profession/person listed is acting as an OT, but may achieve similar outcomes

- registered nurse or physiotherapist
- multi-disciplinary team
- medical practitioner or registered nurse
- physiotherapist
- registered nurse
- physiotherapist
- registered nurse
- physiotherapist
- exercise physiologist, cardiac nurse specialist
- physiotherapist
- multi-disciplinary team
- clinical neuro-psychologist
- multi-disciplinary team
- multi-disciplinary team
- physiotherapist

#### OCCUPATIONAL THERAPY PRACTICE

acute post-surgical management

- supervised resumption of daily activities
- discharge planning - establishing equipment & resource needs
- prescription of equipment
- education on precautions
- splinting
- wound protection & management

cardiac rehabilitation

- prescription of graded activities
- education re self monitoring and precautions
- early mobilisation following heart attack
- testing cardiovascular response and tolerance to activity

driving assessment & rehabilitation

- assessment of capacity to drive on & off road
- prescription of vehicle modification
- prescribing training programs

use of physical modalities

- eg electromyography, functional electrical stimulation, biofeedback, thermal agents

burns

- prescription and fitting of pressure garments and splints to burned or healing skin

brain injury

- assessment and management of reduced cognitive capacity
- accurately determining and responding to safety concerns in the environment

- management of the unconscious client
- positioning & treatment of motor damage and spasticity

environmental modifications & ergonomics

- architect, ergonoist, physiotherapist

- rehabilitation counsellor, coordinator

- physiotherapist

- multi-disciplinary team

- mental health registered nurse
- medical practitioner

- social worker
- social worker

- mental health registered nurse

- multi-disciplinary team

- developmental educator

- teacher, developmental educator, clinical psychologist

- speech pathologist, child health nurse, paediatrician

- physiotherapist

- physiotherapist

- design, placement & prescription of ramps, rails etc
- home modifications eg bathroom, kitchen to enhance safety & function
- assessment of needs recommendations of appropriate and cost effective options
- work site modification or work redesign

#### manual handling

- training & undertaking manual handling of clients

#### mental health

- increasing services provided in home or community. These clients are emotionally and financially vulnerable and may have diminished capacity

- monitoring medication
- monitoring status & early signs of need for management change (including medication review)
- reporting abuse
- managing clients and public in acute crisis and in volatile living conditions
- supervision of untrained/unregulated support staff to ensure accountability of practise
- critical incident debriefing

#### children with developmental delays

- appropriate application of specialised techniques ie sensory integration
- preventative programs eg literacy, developmental programs, social skills training, schools programs
- feeding programs - recommendations for techniques to assist children who have significant problems involving positioning, food texture and facilitation of oral-motor function

#### functional capacity evaluation

- taking client through increasing lifting and other physical demands to identify maximum functional capacity. The therapist needs to identify safe limits and have a knowledge of pathology to avoid serious damage

#### upper limb rehabilitation following stroke

- correct handling techniques need to e

applied

hand therapy

- physiotherapist
  - physiotherapist
  - registered nurse
- splinting - (dynamic & static) after such things as surgical repair of nerve or tendon
  - prescription of programs to mobilise using passive or active techniques to avoid tissue damage
  - identification of infection and appropriate infection control

equipment prescription

- multi-disciplinary team
- assessment of needs & limitations
  - selection of appropriate equipment
  - training and assessment of safety

## APPENDIX 3

# POTENTIAL RISKS TO THE PUBLIC FROM OCCUPATIONAL THERAPY<sup>50</sup>

INTERVENTION	NATURE OF POTENTIAL RISK
<u>functional capacity evaluation</u>	
<ul style="list-style-type: none"> <li>taking client through increasing lifting and other physical demands to identify maximum functional capacity. The therapist needs to identify safe limits and have a knowledge of pathology to avoid serious damage</li> </ul>	<ul style="list-style-type: none"> <li>serious damage to vertebral discs and consequent pain</li> <li>loss of earning capacity</li> </ul>
<u>upper limb rehabilitation following stroke</u>	
<ul style="list-style-type: none"> <li>correct handling techniques need to be applied</li> </ul>	<ul style="list-style-type: none"> <li>damage to a paralysed shoulder can lead to sub-luxation which, once it occurs, is mostly untreatable. The condition causes considerable pain on movement and consequently leads to reduced function of the limb.</li> </ul>
<u>hand therapy</u>	
<ul style="list-style-type: none"> <li>splinting - (dynamic &amp; static) after such things as surgical repair of nerve or tendon</li> <li>prescription of programs to mobilise using passive or active techniques to avoid tissue damage</li> <li>identification of infection and appropriate infection control</li> </ul>	<ul style="list-style-type: none"> <li>causing damage to a surgical repair either by early mobilisation or inadequate protection of graft through positioning, inadequate mobilisation, not dealing with scarring or deformity. There is a fine line for the correct decision between mobilisation &amp; splinting. Damage to nerve can lead to permanent loss of sensation, reduced function &amp;/or increased risk of further injury</li> <li>hand infection is generally regarded as a serious risk, often with hospitalisation required. Inadequate identification can lead to serious consequences including restricted movement, scarring and even potentially amputation</li> </ul>
<u>equipment prescription</u>	
<ul style="list-style-type: none"> <li>assessment of needs &amp; limitations</li> <li>selection of appropriate equipment</li> <li>training and assessment of safety</li> </ul>	<ul style="list-style-type: none"> <li>injury (eg falls) or injury to carer</li> <li>a less than optimal outcome may occur</li> <li>increased need for assistance/services</li> <li>excessive cost for inappropriate equipment recommended and then abandoned</li> </ul>

<sup>50</sup> reproduced from Occupational Therapists Board of SA submission pages 7 - 11

INTERVENTION	NATURE OF POTENTIAL RISK
<u>environmental modifications &amp; ergonomics</u>	
<ul style="list-style-type: none"> <li>• design, placement &amp; prescription of ramps, rails etc</li> <li>• home modifications eg bathroom, kitchen to enhance safety &amp; function</li> <li>• assessment of needs recommendations of appropriate and cost effective options</li> <li>• work site modification or work redesign</li> </ul>	<ul style="list-style-type: none"> <li>• restriction of function/ risk of injury resulting from poor choice of equipment</li> <li>• cost ineffective or overly expensive modifications</li> <li>• damage to plant/equipment/homes</li> <li>• exacerbation of work injury or occurrence of overuse injury by inadequate modification</li> </ul>
<u>manual handling</u>	
<ul style="list-style-type: none"> <li>• training &amp; undertaking manual handling of clients</li> </ul>	poor technique may cause falls and/or injury to client or carer
<u>mental health</u>	
<ul style="list-style-type: none"> <li>• increasing services provided in home or community. These clients are emotionally and financially vulnerable and may have diminished capacity</li> <li>• monitoring medication</li> <li>• monitoring status &amp; early signs of need for management change (including medication review)</li> <li>• reporting abuse</li> <li>• managing clients and public in acute crisis and in volatile living conditions</li> <li>• supervision of untrained/unregulated support staff to ensure accountability of practise</li> <li>• critical incident debriefing</li> </ul>	<ul style="list-style-type: none"> <li>• high risk of harm to client</li> <li>• potential for emotional, physical or financial abuse</li> <li>• failure to obtain a timely and appropriate management of changing health status may lead to exacerbation of illness</li> <li>• risk of harm to workers/carers/public</li> </ul>
<u>children with developmental delays</u>	
<ul style="list-style-type: none"> <li>• appropriate application of specialised techniques ie sensory integration</li> <li>• preventative programs eg literacy, developmental programs, social skills training, schools programs</li> <li>• feeding programs - recommendations for techniques to assist children who have significant problems involving positioning, food texture and facilitation of oral-motor function</li> </ul>	<ul style="list-style-type: none"> <li>• hyperexcitability, deterioration of behaviour/ function, seizures</li> <li>• poor outcomes in education, function</li> <li>• poor behaviour and learning outcomes</li> <li>• poor nutrition , aspiration and choking</li> </ul>



INTERVENTION	NATURE OF POTENTIAL RISK
<u>acute post-surgical management</u>	
<ul style="list-style-type: none"> <li>• supervised resumption of daily activities</li> <li>• discharge planning - establishing equipment &amp; resource needs</li> <li>• prescription of equipment</li> <li>• education on precautions</li> <li>• splinting</li> <li>• wound protection &amp; management</li> </ul>	<ul style="list-style-type: none"> <li>• damage to surgical repair resulting in prolonged hospitalisation</li> <li>• return to hospital due to poor planning</li> <li>• falls</li> <li>• contracture</li> <li>• less than optimal functional outcomes</li> <li>• damaged wound site &amp; infection</li> </ul>
<u>cardiac rehabilitation</u>	
<ul style="list-style-type: none"> <li>• prescription of graded activities</li> <li>• education re self monitoring and precautions</li> <li>• early mobilisation following heart attack</li> <li>• testing cardiovascular response and tolerance to activity</li> </ul>	<ul style="list-style-type: none"> <li>• further cardiac events</li> <li>• alternately delayed return to activity may lead to deterioration of heart muscle and invalidism</li> </ul>
<u>driving assessment &amp; rehabilitation</u>	
<ul style="list-style-type: none"> <li>• assessment of capacity to drive on &amp; off road</li> <li>• prescription of vehicle modification</li> <li>• prescribing training programs</li> </ul>	<ul style="list-style-type: none"> <li>• inappropriate assessment leading to unsafe drivers on road, or safe drivers prevented from driving</li> <li>• significant risk to other road users</li> </ul>
<u>use of physical modalities</u>	
<ul style="list-style-type: none"> <li>• eg electromyography, functional electrical stimulation, biofeedback, thermal agents</li> </ul>	<ul style="list-style-type: none"> <li>• burns</li> <li>• pain</li> <li>• operation of cardiac devices may be affected</li> <li>• circulatory problems</li> </ul>
<u>burns</u>	
<ul style="list-style-type: none"> <li>• prescription and fitting of pressure garments and splints to burned or healing skin</li> </ul>	<ul style="list-style-type: none"> <li>• poorly fitted garments or splints may lead to scarring or contractures which may cause permanent deformity and limited function</li> </ul>
<u>brain injury</u>	
<ul style="list-style-type: none"> <li>• assessment and management of reduced cognitive capacity</li> <li>• accurately determining and responding to safety concerns in the environment</li> </ul>	<ul style="list-style-type: none"> <li>• failure to anticipate safety risks may result in further injury</li> </ul>
<ul style="list-style-type: none"> <li>• management of the unconscious client</li> <li>• positioning &amp; treatment of motor damage and spasticity</li> </ul>	<ul style="list-style-type: none"> <li>• risk of physical, sexual or financial abuse</li> <li>• inappropriate management can result in long term deformity and pain</li> </ul>

## APPENDIX 4

# SCHEDULE OF REGISTRATION FEES<sup>51</sup> - SOUTH AUSTRALIA

1. Application for Registration
  - (a) if the application is made in respect of the applicant's first year (or part year) of practice immediately following graduation and is made:
    - (i) between 1 July and 31 December (inclusive)
 

\$ 65		
35		\$
    - (ii) between 1 January and 30 June (inclusive)
 

		\$
  - (b) in any other case, if the application is made:
    - (i) between 1 July and 31 December (inclusive) in any year
 

\$130		
65		\$
    - (ii) between 1 January and 30 June (inclusive) in any year
 

		\$
2. Application for Renewal of Registration
 

\$120		
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<sup>51</sup> Regulations, Schedule 3

**APPENDIX 5****COMPARISON OF REGISTRATION FEES AND  
NUMBER OF REGISTRANTS**

<b>Jurisdiction</b>	<b>Application for Registration fee<sup>52</sup></b>	<b>Annual Registration fee</b>	<b>Number of registered occupational therapists</b>
South Australia	\$130	\$120	507
Queensland	\$138	\$110.50	1156
Northern Territory	\$40	\$25	78
Western Australia	\$60	\$60	not available

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<sup>52</sup> includes annual registration fee for first year

## APPENDIX 6

### MATERIAL CONSIDERED BY REVIEW PANEL

- ◇ Australian Council of Professions *National Competition Policy and the Professions*
- ◇ Australian Health Minister's Advisory Council *Final Report of the Working Group Advising on Regulatory Requirements for Unregistered Health Occupations* (February 1997)
- ◇ Hansard *Second Reading - Occupational Therapists Bill* (26 September 1974)
- ◇ Hansard *Second Reading - Occupational Therapists Act Amendment Bill* (12 March 1987)
- ◇ Health Department of Western Australia *Discussion Paper - Review of Western Australian Health Practitioner Legislation* (October 1998)
- ◇ Occupational Therapists Registration Board of South Australia *Annual Report 1996*
- ◇ Occupational Therapists Registration Board of South Australia *Annual Report 1997*
- ◇ Occupational Therapists Registration Board of South Australia *Guidelines on Standards of Professional Conduct & Disciplinary Procedures* (March 1995)
- ◇ Occupational Therapists Registration Board of South Australia *Guidelines on Registration* (October 1993)
- ◇ National Competition Council *Considering the Public Interest under the National Competition Policy* (November 1996)
- ◇ Pew Health Professions Commission, report for the Taskforce on Health Care
- ◇ Workforce Regulation *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (US, December 1995)
- ◇ Queensland Health *Review of Medical and Health Practitioner Registration Acts* (September 1996)
- ◇ *Ex parte Tziniolis; re Medical Practitioners Act* (1966) 84 WN 275
- ◇ *Wright v Teachers Registration Board* (1983) 111 LSJS 177
- ◇ *Occupational Therapists Registration Act 1980* (WA)
- ◇ *Occupational Therapist Act 1979* (Qld)
- ◇ *Health Practitioners and Allied Professional Act* (NT)
- ◇ JobGuide Online <http://jobguide.deet.gov.au/JobGuideOnline/Text/Jobs/SA>

**APPENDIX 7****Submissions**

Council on the Ageing (15 December 1998)  
 OT Australia SA Inc (18 December 1998)  
 OT Australia (Australian Association of Occupational Therapists (17 December 1998)  
 OT Australia (Australian Association of Occupational Therapists) and SA Inc (24 February 1999)  
 Occupational Therapists Registration Board of South Australia (18 December 1998)  
 School of Occupational Therapy, University of South Australia (8 December 1998)  
 Workcover Corporation (17 December 1998)  
 Workcover Corporation (24 February 1999)  
 Debbie Atkins, Carolyn Tenant, Brenda Colin and Chris Chittleborough (18 December 1998)  
 Occupational Therapists Registration Board of South Australia (21 January 1999)  
 WorkCover Corporation (15 January 1999)  
 Janelle Anderson and Sally Tonkin (20 January 1999)  
 Dan Donaghey (20 January 1999)  
 Robert Cox (19 January 1999)  
 School of Occupational Therapy, University of South Australia (20 January 1999)  
 Anne Fitzgerald (19 January 1999)  
 Julie John (19 January 1999)  
 Kathleen Reimers (20 January 1999)  
 Council on the Ageing (11 January 1999)

Michelle McIntosh	I. Kampouropoulos	Phil Maxwell
Marion Sheath	Genevieve Cawley	Sue Boswell
A. O'Callaghan	Nicolette Nagy	S. Cotton
Karen Perry	J. Chancellor	Sharon Cates
P. Williams	Flinders Medical Centre	Cathy Blitzer
Cornish Z & A	Elise Sando	Miria Lockett
Kathy Trankalis	Nicky Vas Dew	Kerstin
Riessen		
Mark Thompson	Michelle Tulley	Alison
Copley		
Margaret Jeffrey	Kathy Girvan & Associates	Ms. S. Burden
Dan Donaghey	Helen Moody	Cecilie Bearup
OAM		
Alison Carter	Elizabeth Willson	Melissa Grahame
Mandy Stanley	Hugh Stewart	Margot Masters
Sarah Pearson	Melanie Hawke	Grace Liu
Kathleen Reimers	Karen Ramsay	Kathryn Beattie
Melissa Hall	Sally Hargreaves	Robert Cox
Elisabeth Wylie	Wendi Avery & Joanne Henderson	
Matthew & Nicola Massey-Winthrop	Southern Domiciliary Care Services	

## CONSULTATION LIST

### Appendix 8

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 Executive Officer  
 OT Australia  
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**FITZROY VIC 3065**

Workcover Corporation  
 PO Box 2668  
**ADELAIDE SA 5000**

CRS Rehabilitation  
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**ADELAIDE SA 5000**

Alfreda Rehabilitation  
 1202 Old Port Rd  
**ROYAL PARK SA**

Council on the Ageing  
 GPO Box 1583  
**ADELAIDE SA 5000**

Tracey Fitzsimmons  
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 Disability Advisory Council  
 11 Hindmarsh Sq  
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Glenda Lee  
 Physical Disability Council of Aust, SA Branch  
 178 Henley Beach Rd  
**TORRENSVILLE SA 5031**

Cynthia Betterman  
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 Parent Advocacy Inc  
 5 Ninth St  
**BOWDEN SA 5007**

Manager  
 Options Coordination IDSC  
 21 Blacks Rd  
**GILLES PLAINS SA**

Manager  
 Brain Injury Options Coordination  
 21 Blacks Rd  
**GILLES PLAINS SA**

Manager  
 Sensory Options Coordination  
 21 Blacks Rd  
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Human Resources  
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Domiciliary Care & Rehabilitation Services  
Hampstead Rd  
**NORTHFIELD SA**

Domiciliary Care & Rehabilitation Services  
21a Belmore Tce  
**WOODVILLE PK SA**

Domiciliary Care & Rehabilitation Services  
Haydown Dr  
**ELIZABETH VALE SA**

Domiciliary Care & Rehabilitation Services  
670 Marion Rd  
**PARKHOLME SA**

Diversional Therapy Assoc of SA Inc  
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**CORROMANDEL VALLEY SA**

Music Therapy Dept  
Glenside Hospital  
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**EASTWOOD SA 5063**

Dr Esther May  
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