Discussion paper

National Competition Policy Review of the Hairdressers Act 1988 *- Final Report*

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Government of South Australia

Office of Consumer and Business Affairs

NATIONAL COMPETITION POLICY REVIEW OF THE *HAIRDRESSERS ACT 1988*

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EXECUTIVE SUMMARY

In 1995 the Council of Australian Governments entered into three agreements to give effect to national competition policy objectives. As part of their obligations under these agreements, each State and Territory government gave an undertaking to review existing legislation that potentially restricts competition. The Office of Consumer and Business Affairs is reviewing the *Hairdressers Act 1988* ("the Act") as part of this process.

For the purposes of the Act, hairdressing is the washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair or the massaging or other treatment of a person's scalp. Both the market for hairdressing services and the labour market for hairdressing services are the relevant markets for the purposes of this Review.

The hairdressing industry has been subject to regulation since 1939, when the *Hairdressers Registration Act* came into effect. At that time the Hairdressers Registration Board was established to administer a registration system to address problems with the competence of persons holding themselves out as hairdresser. Registration was initially voluntary but became mandatory in 1979.

The present legislation, which was introduced in 1988, abolished the Hairdressers Registration Board and repealed the registration system. Implicit in this abolition and repeal was a recognition that the objectives of the 1939 Act were no longer relevant. The sole objective of the Act became the protection of consumers by setting qualifications for those entering the hairdressing industry.

The Review Panel has considered whether there is any justification for regulating this industry at all and has concluded that at this point there is sufficient justification for the retention of regulation at the point of entry. This justification is founded on the potential risks to health and safety, the risk of substandard work, and the risk of transactions costs in enforcing consumer rights in the hairdressing market. However, the Review Panel would point out that none of these risks are significant and that this justification is therefore unlikely to be sustainable in the longer term.

The Review Panel therefore recommends that whilst regulation can be justified in the short term, the legislation should be reviewed within three years with a view to its repeal.

The Review Panel has considered various less regulatory alternatives, including complete deregulation by the repeal of the Act, self-regulation by industry bodies and Co-regulation by industry bodies. The Review Panel concludes that these alternatives are not viable for ensuring that consumer protection is maintained. However, the Review Panel would recommend that the *Consumer Transactions Act 1972* be amended to include "hairdressing" as a prescribed service and in this fashion increase the scope of consumer protection by giving consumers rights of redress under that Act, rather than having to rely on common law remedies.

The Act contains a number of restrictions, in the form of barriers to entry and conduct restrictions. The definition of the scope of work is a barrier to entry, as it reserves a body of work to a particular class of person (that is, those who meet the requirements of the Act).

The Review Panel has concluded that the current scope of work for which prescribed qualifications are required is too broad and amounts to an unjustified restriction on competition. The recommendation is therefore that tasks or activities which do not pose any risks to consumers, or which it would be anti-competitive to restrict only to qualified hairdressers be removed from the scope of work by legislative amendment. In particular, it is recommended that the washing of a person's hair, and the massaging or other treatment of a person's scalp be removed from the definition, and therefore the scope of work, of hairdressing.

The requirement to hold qualifications is a significant barrier to entry in the legislation. The Review Panel has assessed the current competency requirements in light of the identified objectives of the Act, and concludes that the present requirements are too onerous and go beyond those required to achieve the Act's objectives. The only requirements which are justifiable are those which are aimed at addressing the objectives of the Act. It is therefore recommended that the qualification requirements be reviewed and the Act be amended to allow the Commissioner for Consumer Affairs to specify acceptable qualifications.

The requirements that hairdressing be performed only by qualified persons, and that only qualified persons may be employed to perform hairdressing services are conduct restrictions imposed on the market by the Act. However, given the conclusion of the Review Panel that there is presently sufficient justification for regulation of the hairdressing industry and the recommendation that the scope of work be reduced, then it follows that these restrictions are justifiable in the public interest at this stage.

The recommendations of the Review Panel are therefore that:-

(1) that the *Consumer Transactions Act 1972* be amended to include "hairdressing" within the extended definition of "services".

(2) that the definition of "hairdressing" contained in section 4 of the Act be amended to read as follows:-

"hairdressing" means the cutting, colouring, setting, permanent waving or other treatment of a person's hair.

(3) that the definition of "prescribed qualifications" contained in section 4 of the Act be amended to allow the Commissioner for Consumer Affairs to specify acceptable qualifications.

(4) that the Act be reviewed within three years with a view to its repeal.

(5) that the definition of "*the Hair and Beauty Industry Training Advisory Committee*" contained in regulation 3 of the *Hairdressers Regulations 1988* be deleted.

PART 1: INTRODUCTION

1.1 LEGISLATIVE HISTORY

The first regulation of the hairdressing industry came with the *Hairdressers Registration Act 1939*. That Act established the Hairdressers' Registration Board of South Australia ("the Board") which administered what was initially a voluntary system of registration for hairdressers, but which became mandatory in 1979.[1]

Apart from incidental amendment the repealed Act remained virtually unchanged until a major review in the mid-1980's. This review resulted in the *Hairdressers Act 1988* ("the Act") which abolished the Board, prohibits the practice of hairdressing by an unqualified person and also prohibits the employment of an unqualified person to carry on the practice of hairdressing. To be qualified, a person receives a certificate of competency granted by the Accreditation and Registration Council ("the ARC") or a pass in examinations in hairdressing conducted by the ARC, or equivalent interstate qualifications.

1.2 CURRENT OPERATION OF THE ACT

Under the Act, it is an offence for an unqualified person (a person without the prescribed qualifications) to carry on the practice of hairdressing for fee or reward.[2] It is also an offence to employ an unqualified person to carry on the practice of hairdressing, with the exception of the employment of a person undertaking an apprenticeship.[3]

Administratively, the Act:-

- abolished the Hairdressers Registration Board of South Australia and transferred its functions to the Industrial and Commercial Training Commission[4] ("the ICTC"); and
- made the Commissioner for Consumer Affairs ("the Commissioner") responsible for the administration of the Act[5].

1.3 WHY IS THE ACT BEING REVIEWED?

On 11 April 1995 the Council of Australian Governments ("CoAG") entered into three inter-governmental agreements to facilitate the implementation of national competition policy objectives.

One of these agreements was the Competition Principles Agreement ("the Agreement"). As part of its obligations under the Agreement, State and Territory governments gave an undertaking to review all existing legislation that restricts competition. The Office of Consumer and Business Affairs is reviewing the *Hairdressers Act 1988* (SA) as part of this process.

National competition policy ("NCP") is about:-

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[1] For persons practising the trade of hairdressing within the Adelaide metropolitan area.
[2] Section 5(1)
[3] Section 5(2)
[4] Now the Accreditation and Registration Council.
[5] By virtue of its status as a "related Act" under regulation 4, for the purposes of section 3(1) of the *Fair Trading Act 1987* (SA).

> *"ensuring that the way markets work serves the whole community, rather than resulting in back-room deals which benefit a few. It is about improving efficiency of the public sector to provide better services at lower prices. And it is about ensuring that legal protections from competition genuinely promote the welfare of all Australians, rather than the narrow interests of the businesses protected. The policy doesn't prevent governments guaranteeing desirable social objectives."*[6]

The guiding principle[7] of competition policy is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:-

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

All existing legislation that restricts competition should be reviewed and, where appropriate, reformed. Any necessary reforms should be implemented by the end of the year 2000[8].

The procedure for reviewing legislation is contained in clause 5(9) of the Agreement. A review should:-

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

Where there is a requirement to balance the benefits of a policy or course of action against its costs, or to assess the most effective means of achieving a policy objective, the following matters[9] should be taken into account where relevant:-

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

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[6] Mr G. Samuel, President, National Competition Council, Australian Financial Review, 22 June 1998, p. 20
[7] Clause 5(1), Competition Principles Agreement
[8] Clause 5(3), Competition Principles Agreement
[9] Clause 1(3), Competition Principles Agreement

1.4 WHAT IS BEING REVIEWED?

As noted above, the Agreement requires that legislation (including Acts, enactments, ordinances or regulations) be reviewed.

Accordingly, this Review applies to:-

Hairdressers Act 1988 ("the Act"); and
Hairdressers Regulations 1988 ("the regulations")

1.5 THE REVIEW PANEL

The review will be conducted by a review panel consisting of the following persons:-

- Ms Margaret Cross, *Deputy Commissioner (Policy & Legal), Office of Consumer and Business Affairs*;
- Mr Matthew Bubb, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs* (to 8 September 1999)
- Mr Adam Wilson, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs* (from 13 September 1999)
- Ms Kate Tretheway, *Legal Officer, Policy and Legislation, Attorney-General's Department*

1.6 THE REVIEW PROCESS

The Terms of Reference for the Review are reproduced at Appendix 1.

In conducting the review of this legislation, the Review Panel adopted the following approach:-

1. to ask, as an initial question, whether there was a continuing necessity for regulation at the entry point of the practice of hairdressing; and

2. on the basis that continuing regulation (in some form) was justified, whether the identified restrictions on competition contained in the current legislation could be justified on a public cost/benefit basis.

The Review Panel prepared a Consultation Draft based on research from available materials, much of it provided by industry representative groups.

The Consultation Draft was released in early December 1998, and submissions were received from interested parties. A schedule of submissions received is reproduced in Appendix 2.

PART 2: GENERAL PRINCIPLES OF NCP LEGISLATION REVIEW

The NCP reform program seeks to encourage greater competition in the marketplace, and to extend the productivity-enhancing effects of competition to virtually all sectors of the economy. It consists of a number of reforms which aim to lower business costs, improve competitiveness and provide the conditions for more sustainable economic and employment growth.

Underlying NCP is the notion that greater competition will create incentives for producers and suppliers:-

- to use their resources better, resulting in higher productivity;
- to increase their efforts to constrain costs and therefore lower prices; and
- to be more responsive to user demands in terms of improved quality.

It is important to acknowledge that some laws may restrict competition. In many such cases restrictions may be essential in order to achieve a significant community benefit. However, NCP requires that all laws restricting competition should be identified, so that those community benefits and the necessity for the restriction can be reviewed in an objective fashion.

2.1 WHAT IS A MARKET?

In general terms, a market is a collection of buyers and sellers that interact, resulting in the possibility of exchange[10]. Buyers include consumers who purchase goods and services, and sellers include firms and individuals who sell their goods and services.

The structure of the market is characterised by a number of factors including the number and size of competitors, the barriers to entry into the market, and the ability for different products to be substituted.

Of all the elements making up a market structure, ease of entry into the market is probably the most important. It is the difficulty which potential competitors experience in entering a market which establishes the possibility of market concentration over time, and it is the threat of the entry of a new player into a market which operates as the best regulator of competitive conduct.

2.1.1 The "market" for the purposes of this Review

The Act applies to two different types of behaviour - the practice of unqualified hairdressing itself, and the employment of unqualified hairdressers (other than those undertaking an apprenticeship).

The Act therefore impacts on two markets relating to hairdressing:-

- the market for hairdressing services (which takes its definition from the Act itself); and
- the labour market for hairdressing services.

[10] Pindyck R.S. and Rubinfeld D.L., Microeconomics (Second Edition), MacMillan, USA, 1992, p.11

Under mutual recognition legislation[11], trades and professions registered in one jurisdiction have the ability to obtain registration in another jurisdiction by means of administrative process. However, as hairdressers in this State are not registered, it would not appear that they could avail themselves of the mutual recognition process. Equally, hairdressers from interstate are not able to make use of the mutual recognition process when coming to this State.

The market is therefore geographically limited to South Australia.

2.2 COMPETITION : WHAT IS IT? WHY THE NEED?[12]

2.2.1 What is it?

Competition expresses itself as rivalry within a market, and can take a number of forms:-

- rivalry on price;
- rivalry on service;
- rivalry on technology;
- rivalry on quality; or even
- rivalry on consistency of product.

Effective competition requires both that prices should be flexible (reflecting the forces of demand and supply), and that there should be independent rivalry in all dimensions of the price-product-service package offered to consumers.

2.2.2 Why do we need competition?

Many economists argue that competitive market forces deliver greater choice and benefits to consumers. If a service provider is able to exercise significant power within its market, a misallocation of resources may result. The provider has no incentive to offer new products to consumers, and consumers themselves may pay more for the service than it is worth. Vigorous competition between service providers encourages them to attract consumers to the business with targeted service provision and/or reduced prices.

It is important to note that:-

> *"Competition policy does not require that all firms compete on an equal footing; indeed, differences in size, assets, skills, experience and culture underpin each firm's unique set of competitive advantages and disadvantages. Differences of these kinds are the hallmark of a competitive market economy.*[13]

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[11] *Mutual Recognition (South Australia) Act 1993*

[12] Drawn from *re Queensland Co-op Milling Association Ltd & Defiance Holdings Ltd* [1976] ATPR ¶40-012 at 17,246; Commonwealth of Australia, Department of Industry, Science and Tourism, *Codes of Conduct Policy Framework* (Canberra 1998) p9.

[13] National Competition Policy, Report by the Independent Committee of Inquiry, August 1993, p. 293

This Review is not primarily concerned with competitive conduct between hairdressers at the margin, unless such conduct results in inefficiencies and costs to the community at large. Rather, the Review is concerned with provisions in the legislation which may restrict entry into the market by new competitors, or provisions (of general application) which may distort competition within the market as a whole.

2.2.3 Why do we regulate competition?

Competition in markets is usually regarded as the most efficient method of allocating resources. However, unrestricted competition may not provide the best or most appropriate economic or social outcome. It has been observed that:-

> *"government intervention in a competitive market is not always a bad thing. Government - and the society it represents - might have other objectives besides economic efficiency. In addition, there are situations in which government intervention can improve economic efficiency. This includes externalities and cases of market failure."*[14]

It is therefore argued that where the potential for market failure or provider failure exists, there exists a basis for government intervention.

2.2.3.1 How does market failure occur?[15]

Competition assumes a market that is perfect, ie:-

- where maximum satisfaction and profit are sought;
- where there are no hidden transaction costs;
- where all parties are completely informed; and
- where there are no costs to other parties.

While vigorous and open competition in markets is regarded as the most efficient method of allocating the community's resources, unrestricted competition does not always provide the best possible economic and social outcomes.

From the consumer's viewpoint, inefficient market outcomes may result where there are high transaction costs, information asymmetry or externalities. Such situations indicate market failure and may justify regulatory intervention to restore efficiency.

2.2.3.2 How does provider failure occur?

Conventional forms of market failure do not, however, account for the failure of the service provider to honour their obligations - eg, through the intervention of dishonesty, insolvency or the systematic performance of substandard work.

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[14] Pindyck R.S. and Rubinfeld D.L., Microeconomics (Second Edition), MacMillan, USA, 1992, p.320

[15] Partly drawn from Commonwealth of Australia, Trade Practices Commission, *Regulation of professional markets in Australia: issues for review* (Canberra 1990) pp22-25; Victoria, Competition Policy Task Force, *National Competition Policy: Guidelines for the review of legislative restrictions on competition* (Melbourne 1996) pp70-72.

In theory, consumers and service providers contract for a pre-defined quality of service in exchange for a price that the provider can demand without losing business. The provision of service quality less than that bargained for may be compensated for by regulatory intervention such as the setting of point-of-entry standards, the imposition of ongoing requirements or the provision of a 'safety net' for consumers.

Analyses of occupational regulation schemes in Australia have produced a list of potential risks to consumers that are generally not related to market failure.[16] The main types of benefit to the public consist of protection against a risk:-

- of financial loss;
- of substandard work being performed;
- to health and safety; and
- of criminal activity.

These will be explained in further detail later in this Report.

2.3. THE EFFECT OF OCCUPATIONAL REGULATION ON COMPETITION[17]

The intended effect of occupational regulation is to address concerns with market and/or provider failure. **Any regulation imposed should be therefore be appropriate to addressing these concerns**. However, most occupational regulation legislation was designed without any explicit consideration of its impact on competition.

Restrictions on competition imposed by occupational regulation form two broad groupings:-

- barriers to market entry; and
- restrictions on competitive conduct.

These are briefly discussed below.

2.3.1. Barriers to Entry

Regulatory barriers to market entry have the most direct influence over competitive conditions within an industry.

Numerous point of entry controls can exist:-

- barriers creating a monopoly;
- restrictions that operate by reference to the number of producers or product;
- barriers operating against interstate goods or service providers;
- barriers operating against foreign goods or service providers;
- restrictions that operate by reference to standards or qualifications.

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[16] See Victoria, Law Reform Commission & Regulation Review Unit, *Principles for Occupational Regulation* (Melbourne 1988).
[17] Partly drawn from Moore & Tarr, "*General Principles and Issues of Occupational Regulation*" in (1989) 1 *Bond LR* 119 at 122-123.

It is this final barrier which is of most relevance to this Review.

The Hilmer Report noted that some "*regulatory regimes may be more restrictive than necessary to protect the public interest objectives for which they were imposed*", and even if the imposed standards are objectively reasonable, "*there may be concerns over whether they are administered or enforced in a way that unduly favours incumbents*."[18]

The theory of "contestability" suggests that the mere threat of potential competition can have efficiency effects similar to actual head-to-head competition. Removing or reducing entry barriers can therefore have a positive impact on performance, even if few or no competitors actually enter the market.

The imposition of point-of-entry controls may preserve the status quo in the industry but, given a stable demand for the services, restriction on their supply may lead to price increases. Further, such regulation may affect the relative prices of labour and material inputs, thereby causing service providers to use inefficient mixes.

Another consequence of the imposition of point-of-entry controls may be 'technological lethargy' where suppliers have no incentive to innovate. Given that many innovations may result in cost reductions to consumers, regulation that inhibits innovation is imposing a hidden cost.

Similarly, point-of-entry controls such as competency standards should not impede the ability of the occupation to be responsive to change or the ability of training providers to respond to the needs of the industry as a whole.[19]

Point-of-entry regulation may also result in functional separation of an industry which restricts market competition and raises the cost of services. Again, this is particularly relevant to this Review. Functional separation may limit the functions that can be performed by other occupations and less-skilled workers. Without functional separation due to regulatory intervention, market forces would determine the most efficient forms of organisation and specialisation. If there are no substantial economies to be made in specialisation, persuasive public interest reasons would need to be advanced for enforcing industry segmentation.

2.3.2 Restrictions on Competitive Conduct

Many sectors of the economy operate under regulatory regimes which restrict certain forms of competitive behaviour. Restrictions on conduct may range from price controls to mandatory codes of practice.

If these controls were maintained by private agreement between competitors many would be caught by the competitive conduct provisions of the *Trade Practices Act*. However, as these controls are imposed by government, they are immune from the *Trade Practices Act* provisions.

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[18] Hilmer, at p.197

[19] National Training Board, *National Competency Standards: Policy and Guidelines* (Canberra 1991) pp 4-5.

As discussed previously, competition expresses itself as rivalry within a market. This rivalry may be in terms of price, service, technology or quality. Effective competition requires both that prices should be flexible (reflecting the forces of demand and supply), and that there should be independent rivalry in all dimensions of the price-product-service packages offered to consumers. Restrictions on competitive conduct can prevent this competitive rivalry from being maximised.

Competitive market forces deliver greater choice and benefits to consumers. If a service provider is restricted in the way it can conduct itself in the market, a misallocation of resources may result. The provider may have no incentive to offer new services or methods of service delivery to consumers, and consumers themselves may pay more for the service than it is worth. Vigorous competition between service providers encourages them to attract consumers to the business with targeted service provision and/or reduced prices.

Clearly, justification exists for government intervention in circumstances of market or provider failure in the marketplace. Intervention in an occupational services market, which may take the form of conduct or entry restrictions, must necessarily be subject to close scrutiny to ensure that any anti-competitive effects of this regulation can be justified as being in the best interests of the public.

2.4 ALTERNATIVES TO REGULATORY INTERVENTION

The patchy performance of licensing systems in pursuit of their declared objectives, together with a growing sensitivity to the costs of these systems, has led to a renewed interest in the potential for co-regulation and self-regulation. These involve, respectively, greater participation in, and exclusive control of, regulation by industry organisations. A significant quantity of work has been undertaken along these lines recently.[20]

[20] South Australia, Office of Consumer and Business Affairs, *Industry Regulation: The way forward* (Adelaide 1996); Commonwealth of Australia, Department of Industry, Science and Tourism, *Codes of Conduct Policy Framework* (Canberra 1998) p9; Commonwealth of Australia, Trade Practices Commission, *Self-regulation in Australian industry and the professions* (Canberra 1988); Commonwealth Department of Industry, Science and Tourism, *Benchmarks for Industry-based Customer Dispute Resolution Schemes* (Canberra 1997); Commonwealth of Australia, Australian Competition and Consumer Commission, *Benchmarks for dispute avoidance and resolution - a guide* (AGPS, Canberra 1997); Commonwealth of Australia, *Fair Trading Codes of Conduct - why have them, how to prepare them* (AGPS, Canberra 1996); Commonwealth of Australia, Ombudsman's Office, *A Good Practice Guide for Effective Complaint Handling* (Canberra 1997); New Zealand, Ministry of Consumer Affairs, *Market Self-regulation and Codes of Practice* (Wellington 1997)

Clause 5 of the Agreement requires the Review Panel to consider alternate means for achieving the same objectives of the legislation. The Review Panel canvassed views on a number of alternatives for regulation in this industry in the Consultation Draft released in December 1998. The Review Panel has considered these views in formulating its recommendations, which are contained in Part 7.

PART 3: ANY REGULATION?

3.1 IS THERE A NEED FOR CONTINUING REGULATION?

As a threshold question, consideration must be given as to whether there is an ongoing need for regulation of the hairdressing industry at the point of entry.

To answer this question it is necessary to consider the objectives of the legislation to identify the market or provider failure which regulation seeks to address, and to also consider whether the restrictions effectively address these failures.

It is also necessary to consider the contemporary hairdressing market to identify possible areas of provider or market failure in order that ongoing regulation can be justified.

3.2 OBJECTIVES OF THE ACT

It is argued, and indeed accepted by the Review Panel, that the objectives of the legislation were quite different when first introduced in 1939.

During the debate on the new Bill in 1988, the justifications for abolishing the Board and its ability to impose requirements were given as follows:-

> *"It was with this history in mind that the recent re-examination of the Hairdressers Registration Act proceeded. Several facts emerged. First, safety and health standards, which were among the issues leading to the original legislation, are these days comprehensively dealt with by the Industrial Safety, Health and Welfare Act and its Commercial Safety Code, by the SAA Wiring Rules, the Electrical Articles and Materials Act, and the Health Act*[21].
>
> *Secondly, the training system these days is highly developed. Apprenticeships are supervised by the Industrial and Commercial Training Commission*[22]*, and the Department of Technical and Further Education conducts extensive courses which apprentices must complete successfully as part of their training.*
>
> *Thirdly, the training system has produced trainees with a high degree of technical competence. Complaints about injurious or otherwise damaging misuse of hairdressing treatments are very rare. When they have arisen, they have often been dealt with by officers of the Department of Public and Consumer Affairs as part of their work of dealing with problems which arise between traders and consumers.*
>
> *Fourthly, an industrial award exists to protect the position of qualified and trainee employees - and thereby protect the public.*
>
> *In principle, all of these things could be done alongside the maintenance of a registration or licensing system, but the Government does not believe that the expense and effort of maintaining a registration system can continue to be justified in circumstances in which there*

[21] Succeeded by the *Occupational Health and Safety Act 1986*, the *Electrical Products Act 1988*, and the *Public and Environmental Health Act 1987* respectively.
[22] Succeeded by the Accreditation and Registration Council

> *are other mechanisms supporting public safety and in which there are no indications of serious problems which require further measures for the protection of the public interest."*[23]

Thus it can be surmised that the 1939 legislation had the following objectives:-

- promotion and preservation of health standards;
- support of the training system;
- promotion of technical competence to prevent injury to clients; and
- support for the award system.

As the parliamentary debate indicates, between 1939 and the revision of the legislation in 1988, significant developments took place in government policy and legislation. These developments in the training and industrial relations spheres, coupled with significant advances in health and safety and general consumer protection laws largely addressed the objectives of the 1939 legislation.

The present Act repealed the registration system (which had been partly justified by the need for imposing health and safety standards and for the screening of training providers) while leaving the mechanism for the recognition technical competence in place.

The Act establishes a very light handed a negative licensing regime. This regime simply sets out the prescribed qualifications which a person must obtain prior to practising as a hairdresser. It does not contain any disciplinary powers providing public protection against poor quality hairdressers. By way of comparison, all other licensing regimes administered by the Office of Consumer and Business Affairs allow that the Commissioner for Consumer Affairs or any other person may bring disciplinary action in the District Court against a service provider on certain grounds. There is no method in the Act for excluding a person from the industry on any grounds. Provided a person has the requisite training they can practice as a hairdresser in South Australia.

Further, there is no direct mechanism in the Act which provides redress for a disgruntled consumer of hairdressing services. The only redress that consumers will have is by bringing their private court actions against the hairdresser concerned.

It can therefore be concluded that the current Act only seeks to ensure that all hairdressers entering the industry possess certain minimum levels of competence in the technical aspects of their trade.

As a threshold question, it is necessary to consider whether the requirement that a person be able to demonstrate a prescribed level of competence can continue to be justified. If it cannot, then the legislation itself cannot be justified, and should be repealed.

The Consultation Draft paper noted that complaints made to the Office of Consumer and Business Affairs about hairdressing services number less than 180 in the 10 years of the Act's operation. In the period since 1994 -1995, there have been less than 10 complaints a year (on average.) In the context of the number of hairdressing services performed over the period, the number of complaints is statistically insignificant. Importantly, those complaints received have not, in the main, been related to issues of health and safety.

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[23] Hon G.J. Crafter, *South Australian Parliamentary Debates*, 7 April 1988, p.3910

Submissions by the Hair and Beauty Industry Association and the International Association of Trichologists dispute these complaint rates, arguing that most consumers affected by poor hairdressing services simply "vote with their feet" and do not lodge complaints with the Office of Consumer and Business Affairs. The trichologists indicate that they see "hundreds of patients who have suffered permanent scarring of the scalp or auto-immune problems as a result of chemical treatments to the hair." Nonetheless, of the case studies provided by the trichologists, none suffered permanent damage, and in a number of cases, the patient had contributed to the damage.

The Review Panel is prepared to accept that the number of complaints made to the Office of Consumer and Business Affairs or the Health Commission may not accurately reflect the actual degree of dissatisfaction with hairdressing services. However, if the consumer does not consider the damage serious enough to warrant complaint, should the Office of Consumer and Business Affairs or other regulatory body be concerned?

3.3 COSTS OF REGULATION

Regulatory intervention into an industry will inevitably give rise to some costs, which may occur in the government, industry or consumer sectors. The sources of cost identified are:-

- the actual and opportunity costs of complying with a regulatory regime;
- the actual and opportunity costs of administering a regulatory regime; and
- the costs arising from a reduction in competition and contestability in the relevant market.

If a scheme of regulation is aimed at ensuring a minimum level of supplier competency in a market, then it follows that prospective suppliers will be required to demonstrate that they have attained that level of competency. In most cases, this will mean that a person must undertake some form of training course, and bear the private cost of that training in the form of a "once off" cost, or alternatively, a "once off" plus ongoing training costs. However, it may also be the case that public money is spent in subsidising that training. In either event, public costs may arise either through the actual and opportunity costs of the money spent on training, or by a limitation on service supply. This limitation may occur through potential suppliers becoming discouraged from entering the market due to the private costs of training.

The incidence of training related costs in relation to the hairdressing industry will depend entirely on the particular form of regulation. History shows that regulation of the hairdressing market in South Australia has consistently required pre-entry training, and this remains the case. It is possible to conclude that regulation of hairdressing will impose significant costs, in terms of both the actual and opportunity costs of training.

Regulation of markets can impose costs on governments, and therefore ultimately the wider community, through administration and compliance requirements. These are not only the immediate costs of funding, but also the opportunity costs of that funding. Again, the nature of the particular regulatory scheme will direct the extent of costs incurred.

Under the pre-1988 legislation, costs were imposed on government through the administration of the Hairdressers Registration Board. The present regulatory scheme abolished that system, and therefore these costs are no longer relevant. However, there will

be costs incurred by the government through compliance monitoring in the hairdressing industry.

It is also important to note that various occupational regulatory systems have compliance regimes which include powers to discipline and/or prosecute practitioners. Under the current scheme the only compliance power is the power to prosecute those in breach of the Act. Consequently, there are potential costs under the scheme in terms of the costs of undertaking any prosecution. Arguably however, the costs of administration and compliance are more than offset by the resultant public benefit of a more efficient hairdressing industry.

As discussed at part 2.3.1, the theory of contestability would suggest that the mere threat of entry by new competitors into the market can act as a spur to incumbents to improve efficiency. Regulation of the hairdressing market which restricts entry to new competitors is a key contributor to a reduction in the level of contestability in that market. With little threat of new competition, hairdressers presently in the market have a greater incentive to maintain the status quo than to explore new or different service delivery options. On this basis, regulation may lead to a market which does not operate in a fully contestable manner, and therefore costs, both tangible and intangible, will be imposed on the wider community.

Further, given a static level of competitor entry into the market, increasing demand for hairdressing services will lead to a relative decrease in supply, and thus higher prices to consumers.

In addition to decreased contestability, regulation of the hairdressing market may lead to a reduction of competition overall. Given that the hairdressing services market has been regulated since 1939 it is not possible to accurately assess the effect of regulation on competition and therefore on prices. The Review Panel notes the submission of the Hair and Beauty Industry Association that "*prices for a basic service such as a haircut will vary from $10 to $50*"[24]. Nonetheless, the Review Panel considers that regulation which determines not only those who may enter the market, but also the manner in which service may be delivered, will have a prima facie anti-competitive effect. It is argued that as competition is the force which drives down prices, when levels of competition are reduced there will be a resultant increase in the costs of acquiring hairdressing services.

As discussed earlier in this Report, reduced levels of competition and contestability may also give rise to a situation of technological lethargy, where suppliers have lowered or no incentive to develop or implement new and potentially more efficient methods of service delivery. There will be costs imposed on the community as a whole through foregone efficiency gains in such circumstances. If, as is the case under the present regulatory scheme, a supplier is limited to suppling only a particular type of service, in this case the service of a qualified hairdresser, then there is no incentive for that supplier to explore other avenues of service delivery. Whilst there may be other methods of service delivery which would result in a more efficient use of resources, both by the consumer and supplier, these will not be pursued in the regulated environment. Again, this may be considered to impose both actual and opportunity costs on the wider community.

The Review Panel therefore concludes that regulation in an industry may result in increased costs to the community as a whole through :-

[24] Submission of Hair and Beauty Industry Association, paragraph 6

- the mandating of qualifications;
- the requirements of administration and enforcement of the regulation;
- decreasing the level of contestability in the market;
- decreasing the level of overall competitiveness in the market; and
- allowing the potential for technological lethargy to arise.

Having identified that regulation of the hairdressing market potentially imposes costs on the wider community, it is necessary to analyse the potential for market and provider failure in the hairdressing market to see if regulation would confer a benefit on the wider community by addressing these issues.

3.4 OPPORTUNITIES FOR MARKET FAILURE IN THE HAIRDRESSING INDUSTRY

Market failure may occur due to the existence of:-

- transaction costs;
- information asymmetry; or
- externalities.

3.4.1 Transaction Costs

Transaction costs are incurred in doing business with a service provider, and include the costs of locating a service provider, reaching agreement on the price and other aspects of the exchange, and ensuring that the terms of the agreement are fulfilled (including resort to legal advice and court action). Market failure may occur where consumers experience significant search costs in a market with which they are unfamiliar and therefore either abandon the search or make a less than optimal decision.

The unfortunate reality is that markets generally make available less information than would be desirable in a perfectly competitive market. In any event, consumers will only search out and utilise information so long as the costs of their search are lower than the savings that they expect to make. Occupational regulation seeks to provide information about practitioners in a particular occupation. The fact that a person has satisfied required standards is an indication to the consumer (although not a guarantee) of the quality of the service that will be provided. This can decrease the cost to consumers of individually measuring the quality of services.

Purchasers of complex services may experience significant search costs in a market in which they are unfamiliar. The Review Panel does not conclude that hairdressing services are unusually complex so as to represent a significant transaction cost.

In support of this view, the Act does not restrict a person from performing hairdressing, only the practice of hairdressing for fee or reward. There is an implicit acknowledgment that the skills involved in hairdressing are not so complex or dangerous that it is necessary to restrict the actual practice of these skills to qualified and/or competent persons. This can be contrasted with provisions under the *Plumbers, Gas Fitters and Electricians Act 1995* for example. In that Act, the performance of plumbing, gas fitting and electrical work (whether

or not for fee or reward) may only be carried out by registered workers, who satisfy prescribed qualification and competency requirements.

Should further evidence be required, data from the manufacturers of home hair care appliances indicate that there has been a significant increase in the sales of such appliances. Estimates provided to the Review Panel suggest national industry sales figures of around 500,000 units per annum[25]. The Office of Consumer and Business Affairs is not aware of evidence that significant consumer detriment has occurred as a result of unqualified consumers undertaking cutting tasks using these appliances. This would indicate that cutting tasks are not overly complex, and consumers are well placed to assess the outcome of hairdressing services received.

Consumers can also purchase a range of chemicals and products from retail outlets such as supermarkets and salons, however, it is argued by the industry that these are "watered-down" versions of "salon-only" products. This assertion is contradicted by information provided by the Health Commission, which indicates that the products available to consumers through supermarkets are identical to "salon-only" products.

Clearly the actual costs of locating a hairdresser are insignificant. The Yellow Pages contains some 15 pages of hairdressers. In addition, many submissions to the Review Panel noted that there was a ready supply of salons in most shopping areas. It would also seem that the clientele of a salon is largely generated by word of mouth. The submission of the Hair and Beauty Industry Association ("HBIA") noted that while failure is a risk for any small business, the only cost to the consumer which would arise from the failure of a salon is the cost of selecting a new service provider.

As for ensuring that the terms of the agreement are fulfilled, the Act in no way facilitates this process. It provides no redress measures for consumers, and contains no disciplinary provisions. Consumers who perceive that the contractual agreement between themselves and the hairdresser had not been fulfilled would need to rely on existing statutory[26] and common law remedies.

Given the relatively low cost of hairdressing services, it is unlikely that a consumer would assume the additional costs of enforcing their legal rights through the courts. The submission by the International Association of Trichologists indicates that most legal action involving hairdressing services comes about through frustration with the complaint handling of the salon - in other words, legal action is often commenced for punitive reasons, rather than in a genuine attempt at enforcement of rights.

That said, there appears to be some support for an option raised by the Review Panel in the Consultation Draft - that of prescribing "hairdressing" as a service under the *Consumer Transactions Act*. The effect of this proposal would be that a series of implied warranties would be incorporated in every contract for hairdressing services. These implied warranties are contained in section 7 of the *Consumer Transactions Act*:-

> *7. (1) There is an implied warranty in every consumer contract for the provision of services that the services will be rendered with due care and skill and that any materials supplied in*

[25] Submission H14, Remington Products Australia Pty Limited, 2 March 1999.
[26] Eg *Fair Trading Act 1987*, *Trade Practices Act 1974 (Commonwealth)*.

connection with those services will be reasonably fit for the purpose for which they are supplied.

(2) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier, the particular purpose for which the services are required, or the result that the consumer desires the services to achieve, so as to show reliance on the supplier's skill and judgment and the services are of a description that it is in the course of the supplier's business to provide, there is an implied warranty in a consumer contract for the provision of the services that the services and any materials supplied in connection with the services will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

A breach of an implied warranty (which gives rise to a loss on the part of the consumer) gives the consumer a right to apply to the Magistrates Court for relief.[27]

The advantage to the consumer is that they are not put in the position of having to prove that the statutory warranties existed, which reduces the costs involved in litigating to enforce their rights. The consumer is also protected in that these warranties cannot be excluded - even if the consumer agrees.[28]

An indirect benefit of prescribing "hairdressing" is that it would reinforce to those performing hairdressing services for fee or reward the duties that are imposed upon them, and that they may face consequences from a failure to discharge those duties. This may have a positive effect upon practitioners, even if no claims are made by consumers against hairdressers.

The Review Panel therefore concludes:-

- that the cost of enforcing rights through the legal system represents a transaction cost within the market for hairdressing services; and
- that including "hairdressing" as a prescribed service under the *Consumer Transactions Act 1972* will assist in reducing transactions costs faced by consumers in the hairdressing services market.

3.4.2 Information Asymmetry

Information asymmetry occurs where there is a disparity between the information at the disposal of the consumer when compared with the service provider.

Consumers have a natural incentive to buy services with a price/quality combination they desire. However, it is difficult for them to do so where the supplier has much more knowledge about the quality of the service that is being offered. Consumers may be at a disadvantage in:-

- assessing the need for service or the type and quality of service required;
- distinguishing the competent service provider from the incompetent; and

[27] *Consumer Transactions Act 1972*, section 18
[28] *Consumer Transactions Act 1972*, section 8(1)

- assessing the quality of the services rendered and whether they are excessive or inadequate for their needs.

Regulatory intervention can provide consumers with additional confidence in the service provider, instead of exposing them to the risk of inappropriate selection of service and the possibility of exploitation by the provider. This is particularly true in markets relating to the provision of complex services.

Strong adherents of market theory object that this sort of intervention pre-empts the role of the market in setting the preferred levels of competence and service quality. However, the efficient allocation of resources depends on the existence of an informed market. Many markets tend to consist of occasional buyers who are relatively uninformed and regular sellers who are relatively well informed (for example, the new car market).

In the discussion of transaction costs above, the Review Panel concluded that hairdressing services cannot be categorised as overly complex.

Further, consumers in the hairdressing market could generally be considered regular purchasers who are relatively well informed about the services they are purchasing. The HBIA agreed that consumers are well informed about hairdressing services and the costs of those services. The HBIA also submitted that the information asymmetry decreased over time as the hairdresser educated the consumer.

The HBIA made the valid point that many consumers assume that hairdressers are comprehensively regulated and are often surprised to find that this is not the case.

The Review Panel therefore concludes that the degree of information asymmetry is insignificant in the hairdressing market, and would not provide sufficient justification on its own for continuing regulation.

3.4.3 Externalities

Externalities are costs to parties not directly involved in the transaction - they are sometimes referred to as 'spillovers'. A negative externality may be where, for example, an incompetent refrigeration mechanic releases ozone-destroying gases into the atmosphere, thereby causing harm to the community at large. In some occupations, the risk of externalities is so significant for the community that a high degree of assurance of competence upon entry is required. Subsequent remedial action is often too late and ill-directed.

There would appear to be few externalities arising out of the practice of hairdressing. While chemicals are used in hairdressing processes, advice from the Health Commission suggests that they are not of sufficient toxicity to pose a level of risk which would justify specific regulation. In any event, the "Guidelines" issued by the Health Commission (and the *Public and Environmental Health Act*) can be assumed to adequately address any issue of risk. If they do not, then this is a matter for the Health Commission and is outside the scope of this Review.

3.5 PROVIDER FAILURE IN THE HAIRDRESSING INDUSTRY

Analyses of occupational regulation schemes in Australia have produced a list of potential risks to consumers that are generally not related to market failure.[29] The main types of benefit to the public consist of protection against a risk:-

- of financial loss;
- of substandard work being performed;
- to health and safety; and
- of criminal activity.

3.5.1 Risk of financial loss

The financial risks thought worthy of protecting against may be conveniently described as personal risk and business risk.

Personal risks are risks stemming from the honesty of the individuals behind the supplier. Regulating to reduce the risk of dishonesty is normally reflected in the requirement that an applicant be a fit and proper person to hold practice the occupation. This requirement is commonly tested by reference to the applicant's criminal record regarding offences of fraud or dishonesty.

Apart from such regulation, it is normally left to the criminal law to deal with this sort of behaviour. When regulation is preferred, it is because it is regarded as providing more effective and comprehensive prevention than does the criminal law on its own.

Such regulation provides a filter to exclude from the occupation those who have a known predisposition to fraud or dishonesty. A subsequent conviction for fraud or dishonesty will usually be grounds for disciplinary action under the licensing scheme, allowing for the formal and public exclusion of the offender from the occupation.

The second category of financial risk is related to the financial stability of the business. It is common for occupational regulation schemes to create some sort of financial threshold for an intending licensee to minimise the possibility of them becoming insolvent while liable to the consumer. This requirement is commonly expressed in the requirement that an applicant have sufficient financial resources to enable the successful carrying on of the occupation authorised by the licence. It is often supported by constraints on persons who are bankrupts or directors of companies recently wound up from being licensed.

The requirement for financial stability may be supported by consumer safety nets such as guarantee funds usually generated from licensees' fees, compulsory indemnity insurance or fidelity bonds.

The Review Panel has concluded that the risk of financial loss is minimal in the hairdressing industry, with no evidence that money is paid by the consumer to the hairdresser (by way of deposit or otherwise) in advance of the service being provided. Consumers are therefore not

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[29] See Victoria, Law Reform Commission & Regulation Review Unit, *Principles for Occupational Regulation* (Melbourne 1988).

at risk of a hairdresser totally failing to provide the service contracted for. This conclusion was supported by a number of industry submissions.

3.5.2 Risk of substandard work

In many areas, standards of technical competency are mandated to reduce the risk of substandard work being systematically performed. This risk is reduced by the requirement that an applicant for a licence or registration has completed a prescribed course of training or holds prescribed qualifications. Consumers are thus given some confidence that services provided by practitioners will conform to a basic level of skill.

Standards of technical competency fulfil two functions with respect to the performance of substandard work:-

- they provide an education framework for those who are presently incapable of performing that work without consistently requiring supervision (from an employer and/or the courts); and
- they deny entrance to the industry to those who would intentionally provide a lesser quality of service.

Adherents of market theory object that this sort of requirement also pre-empts the role of the market in setting the preferred levels of competence and service quality. However, standard-setting in a free market relies in part on the willingness of buyers to assert their legal rights regarding substandard work. The risks and expense which such action entails for the individual buyer in that market may well deter, at least for a significant time, the correction of systematic incompetence, if the potential stake for the buyer is not significant enough.

This is particularly true of the hairdressing market, given the relatively low costs of purchasing the services in the first place. The potential loss to the individual is quite insignificant, and, as highlighted earlier, the individual is unlikely to take action except for punitive reasons.

Interestingly, no submissions addressed this risk in terms of cutting skills, but focussed on the risks to health and safety (discussed below).

The Review Panel is of the view that service quality in respect of cutting services cannot appropriately be dealt with through specific legislation. Unlike other industries, there is no objective measure (for example an Australian Standard) by which technical skills can be measured. This aspect of hairdressing services is both artistic and aesthetic, and so must necessarily be subjective. What is considered a "good" haircut by one person may not meet with universal agreement. At the end of the day, the consumer is the only person who can make this assessment.

Service quality in respect of cutting services is more appropriately dealt with by way of existing consumer protection laws, and would further be assisted by the recommended inclusion of "hairdressing" as a prescribed service for the purposes of the *Consumer Transactions Act 1972.*

The Review Panel accepts the submission of the International Association of Trichologists, which highlighted that the psychological effect of poor performance of hairdressing services can be quite significant for the individual. It would appear that, in many cases, the psychological effect is disproportionate to the physical harm caused.

A more compelling argument is the possible threat to health and safety which might arise from substandard work.

3.5.3 Risk to health and safety

This risk is mostly relevant to questions about regulating occupations to do with human health. Clearly, where public health and safety are potentially at risk, there is a greater argument in favour of regulation.

Most industry submissions argued that hairdressing services posed risks to the health and safety of consumers of hairdressing services (and the public in general).

The HBIA stated that:-

> *"Health and safety are a major concern within the industry. Should untrained operators be able to work within this arena these risks would be far greater. These risks occur with the use of bleaches, colours and perming solutions and the use of sharps with the consequence of the possibility of the transmission of blood born illnesses."*"

The risks were argued to arise from two specific aspects of hairdressing services:-

- risks arising from unhygienic practices which could lead to infection or transmission; and
- risks arising from the use of chemicals.

3.5.3.1 Risk of Infection or Transmission

Most industry submissions argued that qualification requirements need to be retained to adequately educate trainees as to acceptable standards of hygiene and safety, in order to prevent infection and transmission of diseases.

The President of HBIA stated:-

> *"The authors should be encouraged to attend the salon of an unqualified, untrained hairdresser who has just nicked the neck of an AIDS sufferer and failed to adequately sterilise the equipment they are going to use."*

It has been the common experience of those involved in reviews of occupations and professions that those who perceive their protected position to be under threat to resort to "scaremongering", of which this is a good example.

The Review Panel has already indicated that it accepts that there are risks arising from lack of hygiene - the dilemma is whether that risk is so significant that it justifies legislative intervention. The Health Commission has indicated that while there are risks in this

industry, they are assessed as minimal - the fact that the "Guidelines" have not been given force of law is evidence of this.

There are numerous examples within our society of where consumers face risks, but the government does not regulate in all of these cases. The DETE submission notes the risks to consumers from faulty car repairs from mechanics (who are not licensed or regulated) or from chefs and cooks who may engage in poor health or hygiene standards. Arguably, the potential incidence and effects of these risks are greater than those posed by hairdressers, yet these markets remain unregulated.

3.5.3.2 Risk from Chemicals

A number of hairdressing techniques require the use of chemical products.

Again, numerous submissions argued that the risk from chemicals used in hairdressing services necessitated the continuation of regulation.

The International Association of Trichologists argued strongly that training was necessary to prevent injury to consumers, and provided a number of case studies on a confidential basis to illustrate the effects of poor hairdressing techniques.

However, the Health Commission has provided advice that the chemicals used by hairdressers in the salon setting are of no higher toxicity or danger than those available to the average consumer in their local chemist or supermarket.

The Consultation Draft paper noted that the Office of Consumer and Business Affairs was not aware of consumer complaints in relation to these home treatments. The International Association of Trichologists questioned the validity of this statement, arguing that persons self-administering treatment at home would be unlikely to complain if damage is caused. This is not the experience of consumer affairs officers, who can attest to the fact that consumers are quick to complain if products or services fail to meet expectations. In any event, if the consumer does not consider the damage serious enough to warrant complaint, should the Office of Consumer and Business Affairs or other regulatory body be concerned?

Nonetheless, the Review Panel does consider that a risk to health and safety does exist, and given the uncertainty of the degree of that risk, does not consider that it is yet appropriate to completely remove regualtion in this area.

3.5.4 Risk of criminal activity

This is particularly relevant to occupations which may provide the opportunity for criminal activity to occur.

The risk of criminal activity is also perceived to be low in this industry. The majority of services are provided in publicly-accessible facilities, although there has been some expansion in the provision of mobile hair services in recent times. Nonetheless, no evidence was provided to the Review Panel which would indicate that there was a demonstrable risk of criminal activity in this industry.

3.6 COST BENEFIT ANALYSIS AND CONCLUSIONS

Review Panel concludes that, as with any occupational regulation, there are costs imposed through any form regulation of the hairdressing industry. History has shown that regulation of this market has tended to take the form of restriction of practice to those who possess the requisite qualifications. This restriction necessitates pre-entry training of suppliers. The resultant costs borne by the wider community are:-

- the costs and opportunity costs of training;
- administration and compliance costs imposed on government;
- costs arising from a less contestable hairdressing services market;
- costs arising from a lessening of competition in the hairdressing services market; and
- costs arising from technological lethargy.

The Review Panel also concludes that:-

- hairdressing services are not sufficiently complex to argue that information asymmetry is problematic in this market - indeed, this is acknowledged by the industry;
- externalities are insignificant in this market;
- there is little opportunity for provider failure through financial loss or criminal activity in the market; and
- transaction costs in the hairdressing market are relatively low in terms of the costs of locating a service provider. However, the high cost of enforcing rights (when compared to the relatively low cost of the service provided) represents a transaction cost within the market.

However,

- the greatest potential for market failure in the hairdressing market arises from transaction costs for consumers seeking to enforce their rights. This is exacerbated by the lack of any disciplinary mechanism in the legislation;
- there is an acknowledged risk to health and safety, even though the Review Panel concludes that the degree of risk is overstated by industry submissions, this view being consistent with information and opinion obtained from the Health Commission; and,
- there is a risk of substandard work being performed in the hairdressing industry, and it is likely that this risk would be exacerbated by allowing untrained persons to operate.

The Review Panel therefore concludes that there is, **at this time**, sufficient justification for the retention of regulation at the point of entry to this industry in some form. This conclusion is founded on the potential benefits derived by the wider community in terms of the reduction in health and safety risks, substandard work risks and, to a lesser extent, the reduction of transaction costs, which may be achieved through imposition of some form of regulation.

The Review Panel notes, however, that it adopts this view out of an abundance of caution, and that this position is unlikely to be justified in the longer term, particularly in light of the

recommendation that the *Consumer Transactions Act 1972* be amended to prescribe "hairdressing" as a service.

The Review Panel therefore recommends:-

- that there is currently justification for continuation of regulation in this market;
- that this justification is unlikely to be sustainable in the longer term;
- that the legislation be reviewed within three years with a view to its repeal.

The majority of the concerns put by the industry could adequately be dealt with by the industry itself. The Review Panel agrees with submissions that the industry is not cohesive or well-organised, and is not adequately in a position to assume greater autonomy. This is a further reason why the Review Panel does not feel confident in recommending repeal of the legislation at this time. However, the industry should take steps to better position itself for the future repeal of this legislation.

The next step is to examine the current legislation, and to consider the restrictions on competition within it can be justified.

PART 4 : RESTRICTIONS ON COMPETITION - BARRIERS TO ENTRY

4.1 SCOPE OF WORK

The Act defines what constitutes "hairdressing" for the purposes of the Act:-

> *"hairdressing" means the washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair or the massaging or other treatment of a person's scalp.*

While it is contemplated that certain persons (or classes of persons) may be exempted from the Act, there are no such exemptions currently in force.

The definition of "hairdressing" is extremely broad, and reserves a significant number of tasks for a qualified person (defined further below). Reservation of work is a barrier to entry as it allows only a specific person or class of persons to perform that work, and may be justified where the tasks involved in providing that work are sufficiently complex or dangerous that they require a measured degree of competence at the outset. Clearly, the broader the scope of work reserved, the greater the barrier to entry.

A number of submissions were critical of the breadth of the current definition of hairdressing, in particular, the inclusion of "washing" and "the massaging or other treatment of a person's scalp". The Aged Care Organisations Association ("ACOA") noted in their submission that

> *"the definition of the practice of hairdressing is so wide as to be prohibitive to basic, normal and everyday personal care practices."*

They also submitted that

> *"…aspects of the definition of hairdressing, as it stands, conflict directly with fundamental health practices within residential care settings and services delivered to older persons in their own homes."*

The International Association of Trichologists agreed that "*extensive training is not required for such hairdressing services as washing and simple trims.*"

The HBIA submitted that knowledge and skill is required for basin duties, pointing to warnings from the Australian Physiotherapy Association about the dangers of brain stem injuries.[30] However, the washing of hair would not appear to be an inordinately difficult task - indeed it is something that most people perform every day. Further, the Review Panel concludes that the provisions of the *Occupational Health, Safety and Welfare Act* should ensure that basin duty issues are adequately addressed without requiring further regulatory intervention.

The current definition catches a number of other professions and occupations which it was arguably never meant to include.

The Nurses Board of South Australia submitted that :-

[30] Press Release by the Australian Physiotherapy Association (SA Branch) dated 13 February 1993

> *"all of the tasks described in the definition of hairdressing may be performed as part of nursing practice, that is, in the course of their duties at work. For example:*
>
> - *Nurses often wash client's hair when showering or bathing dependent clients.*
> - *In emergency situations and/or where there is an injury to the scalp a nurse may be required to cut hair.*
> - *Colouring, setting or other treatment of hair may be performed by a nurse at the request of a client, particularly in a long stay area or in situations where a client normally performs this for themselves but is unable to.*
> - *Nurses may also be required to treat the hair and massage or treat the scalp when a client has a dermatological condition."*

The South Australian Massage Therapists Association submitted that massage therapists "*massage or treat a person's scalp or head as part of treatment of a person either for relaxation or recovery from injury*." Their submission highlighted the concern that its members may technically be breaking the law by massaging a person's scalp when they do not possess the requisite hairdressing qualifications. The Association supported the removal of "massaging" from the definition of hairdressing.

Carers in residential or community care situations may also be caught by the current definition of hairdressing. ACOA submitted that "*massage of the scalp is undertaken by carers when the resident is unwell (eg headache) or to sooth anxiety or distress or to assist in settling or sleeping*."

The HBIA accepted that the definition requires amendment to remove "*treatment of a person's scalp*" to reflect the emergence of trichology as a field of health practice.

This was also accepted in a joint submission from a number of salon owners who agreed that "*the definition 'treatment of a person's scalp' should be removed as this pertains to trichology*."

The Nurses Board submitted that:-

> *"In order to allow nurses to continue to practice without unnecessary restriction, the current definition of hairdressing needs significant revision."*

In the light of submissions received, the Review Panel concludes that the current definition of hairdressing incorporates tasks for which there is no significant identifiable risk and which therefore do not warrant regulation, and that certain tasks may be appropriately undertaken by persons other than hairdressers, without any significant risk to consumers.

In particular, the Review Panel can identify no significant risk in the washing of hair to justify the reservation of this work, and that the massaging or treatment of a persons scalp is a task which may be more appropriate for persons other than hairdressers. These are considered to be intermediate restrictions on competition and the Review Panel recommends that these findings be recognised through amendment of the definition of hairdressing in the Act to read as follows:-

> *"hairdressing" means the cutting, colouring, setting, permanent waving or other treatment of a person's hair.*

4.2 QUALIFICATIONS

4.2.1 Requirements under the Act

The Act requires that a person have prescribed qualifications in order to be a "qualified person" for the purposes of the Act. This requirement, *prima facie*, is a barrier to entry.

The prescribed qualifications are set out in the legislation.

Section 4 of the Act deems that any person registered under the repealed Act as at 30 June 1988 holds prescribed qualifications. Section 4 further provides that for any other person, the regulations may specify what constitutes "prescribed qualifications".

Regulation 4 specifies "prescribed qualifications" in each of five different circumstances:-

(a) in the case of a person who was, as at 30 June, 1988, required to be registered under the repealed Act but who was not so registered as at that date -

(i) registration under the repealed Act at any time during the operation of that Act;

and

(ii) a pass in the examinations for hairdressing conducted -

(A) by the Board under the repealed Act after 30 June, 1988;

or

(B) by the Commission after the commencement of these regulations;

(b) in the case of a person (not being a person who was, as at 30 June, 1988, required to be registered under the repealed Act) who has lawfully practised hairdressing in this State (other than as an apprentice) at any time prior to 2 March, 1988 - that practice;

(c) in the case of a person who has, as at the commencement of these regulations -

(i) been granted a certificate of competency by the Commission;

and

(ii) passed the examinations for hairdressing conducted by the Board under the repealed Act after 30 June, 1988 - that certificate of competency and pass;

(d) in the case of a person who has, as at the commencement of these regulations been granted a certificate of competency by the Commission, but has not passed the examinations for hairdressing conducted by the Board under the repealed Act - that certificate of competency and a pass in the examinations for hairdressing conducted by the Commission;

(e) in any other case -

(i) a certificate of competency granted by the Commission after the commencement of these regulations;

(ii) a certificate as to the completion of a course of training in hairdressing issued by an authority of another State or a Territory of the Commonwealth with which the Commission has a reciprocal arrangement relating to the recognition of training qualifications;

or

(iii) a pass in the examinations for hairdressing conducted by the Commission.

The effect of these provisions is to give the ARC the power to set the necessary standard of qualification for entry into the profession. This is possible because the ARC specifies the necessary requirements for awarding of the Certificate of Competency.

4.2.2 The Role of the Accreditation and Registration Council ("the ARC")

The ARC accredits courses, recognises training programs and short courses, and registers training organisations. It is established and empowered by the *Vocational Education, Employment and Training Act 1994* (SA) ("the VEET Act").

It is also the function of the ARC to grant, arrange for or approve the granting of certificates to those completing education and training courses.[31] A certificate will include those qualifications recognised under the Australian Qualifications Framework ("AQF")[32]

The ARC approves registered organisations to grant qualifications in respect of accredited courses for which the organisations have been registered by the ARC. It may itself grant qualifications to persons completing accredited courses previously determined by the ICTC.

The ARC may also recommend that a vocation be declared a "trade" for the purposes of the VEET Act. If this is done, an employer must not undertake to train a person in that trade unless under a contract of training. The ARC has set certain conditions to be observed in the contract of training. One such condition is that apprentice hairdressers must complete one of the two courses accredited under the AQF: the Certificate in Hairdressing (course code FTA) or the Certificate in Hairdressing (course code S10). These courses are provided by TAFE-SA and a number of other training providers.

A person who completes one of the courses specified is entitled to receive a qualification under the AQF, as determined by the ARC in accrediting the course. Certificates of competency in hairdressing are presently issued by the ARC upon satisfaction that competency has been achieved as advised by TAFE-SA or the relevant registered training organisation. In the future, the registered training organisation will be approved by the ARC to issue the qualification itself.

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[31] *Vocational Education, Employment and Training Act 1994* (SA), section 14(1)(f)

[32] Established by agreement of the Ministerial Council on Education, Employment, Training and Youth Affairs. The Agreement commenced on 1 January 1995 and will be fully operational by 31 December 1999.

4.2.3 Are qualifications necessary at all?

In a submission by the Department of Industrial Relations (NSW) it was stated:-

> *"There is always a restriction on competition in any market where there is a set of compulsory standards for the person to enter the market. Indeed, in most trades and callings there are set standards for a person to qualify in the trade or calling. The nature of the work undertaken by hairdressers place it in a special category because of the health and safety implications which apply to the trade and the corresponding risks to the public from unqualified or underqualified operators. Licensing is seen as a necessary ingredient in maintaining the standard of competence in the industry."*

It was argued by the HBIA that the removal of the qualification requirement would destroy the training environment and undermine the apprenticeship system. In response to this submission, the Review Panel would make the following comments:-

- it is not an objective of the Act to support the training system or the apprenticeship structure;

- as "hairdressing" remains (at least at this point in time) a declared trade under the *Vocational Education, Employment and Training Act 1994*, any person wishing to train someone in hairdressing must do so under a registered contract of training. HBIA has acknowledged that this would be unaffected by repeal of the Hairdressers Act, but argues that:-

  > *"this then means if a person has not undertaken any training they can still call themselves a hairdresser and conduct and compete in a business alongside of those who have made the commitment to the training program."*

The assumption appears to be that protection from competition is a "reward" for completing a training program. Clearly, this is not an objective of the Act.

As the preceding portions of the Report have made clear, the chief justification for continuing regulation of the hairdressing industry is concerns in relation to the health and safety of consumers. The Review Panel accepts that presently the most appropriate method for achieving this outcome is through pre-entry training. However, the Review Panel would strongly reiterate that clearly any qualifications or competencies specified in legislation must directly relate to the potential harms sought to be addressed by the legislation.

4.2.4 Are the current qualification requirements appropriate?

Until recently, a person could only enter the hairdressing industry by undertaking a four year apprenticeship. This method of training requires that a person attend a course of instruction offered by TAFE for 704 hours, which usually works out to around one day a week for around two years. The "on-the-job" component consists of employment at an appropriate salon (with which a contract of training is agreed) during the other four days a week. The trainee is subject to a three month probation period under the contract of training.

This method of entry into the industry still exists, although apprentices have had the choice of completing their "off-the-job" training component with a private training organisation since 1 January 1998. Private organisations presently charge up to $2,200 for the "off-the-job" component, which usually takes around two years to complete. This amount funds tools and texts. The Government subsidises the training at a rate of $6.50 per training hour, which is paid to the organisation itself.

Certificates of competency issued on the completion of the four year apprenticeship in recent years are as follows:-

Reporting Period	**Certificates**
1989	**319**
1990	**273**
1991	**294**
1992	**290**
1993	**261**
1994	**235**
1995	**199**
1996	**179**
1997	**182**

The decline in the number of completions during this decade is partially attributable to the introduction of a new form of entry-level training. In late 1991 the ARC accredited a one year, full-time training course with some (non-employment based) work experience requirements.

As well as departing from the four year full-time employment based indentured apprenticeship model, the new arrangements involve privately provided formal training. Such courses may by a conducted by a registered training organisation and involve 2,000 hours of full-time training, including an "off-the-job" training component over a one year period.

Entrants are not required to enter a contract of training in this situation. Trainees embarking on this course pay fees of up to $9,500 direct to the registered training organisation. Of that amount, around $1,500 goes to tools and texts for the trainees' use. Registered training organisations offering the one-year course may also conduct the "off-the-job" training component for the four year apprenticeship course.

An examination of the current modules contained in the approved training courses indicates that a person must complete 14 modules to meet the requirements for award. These 14 modules are:-

Module Title	**Required Competencies**
Personal Projection	Orientation Personal Grooming Hand & Nail Care Body Hygiene Wardrobe/Accessories Visual Impressions

	Personal Health/Hygiene
	Posture Requirements
Occupational Health & Safety	OH&S Rules/Regulations
	Sterilisation/Sanitation
	Tools/Equipment Workplace
	First Aid
	Care and Maintenance of Tools of Trade
	Use, Storage and Handling of Hazardous Substance
	Protective Clothing and Substance in the Workplace
	Human Relations in the Workplace
Workplace Requirements	Methods of Communication
	Verbal Communication
	Non-verbal Communication
	Communicating Salon Service
	Communicating for Workplace Co-operation
	Reception
	Telephone Communication
	Consultation
Anatomy & Physiology	Human Body Cell
	Skeletal System
	Muscular System
	Nervous System
	Circulation System
	Nutrition
	The Skin
	The Hair
	Skin and Scalp Disorders
Hairdressing Science	Chemistry Defined
	Elements and Compounds
	Acidity and Alkalinity
	Physical and Chemical Substances in Hairdressing
	Physics
	Perming/Straightening Chemistry
	Colour Chemistry
Consumer Relations	Communication
	Client Expectations
	Consultation
	Evaluation of Service
Tools of Trade Equipment	Equipment
	Tools of Trade
Treatment of Hair and Scalp	Preparation of Consumer for Service
	Shampoo
	Shampoo Types and Selection
	Conditioning
	Massage
	Treatment
	Recommendations
Hair Design and Styling	Elements/Principals/Design

	Client and Hair Character
	Moulding of Hair
	Water Waving
	Blow Waving
	Volume and Indentation
	Thermal Styling
	Pincurling
	Setting Design
	Shape/Design/Finishing
	Long Hair/Style and Design
	Competition Styling
Hair Colour	Physics of Colour
	Colour Classifications
	Types of Colour
	Colour Application
	Lightening Bleaching
	Corrective Colour
	Specialised Colour
Perming and Straightening	Chemistry
	Analysis
	Perming Process
	Winding Techniques
	Perming Selection
	Rinsing Procedures
	Neutralisation
	Relaxing Straightening
Cutting	Cutting and Design Analysis
	Cutting Techniques
	Cutting Shapes
	Line and Direction
	Beard and Moustache
	Shaving
Everyday Business Practice	Records
	Stock Control
	Banking
Retail Service	Salon Service
	Professional Retail Service

It is clear that the current qualification requirements are too onerous and extensive. This is true in the context of the existing definition of hairdressing, but even more so in the light of the revised definition of hairdressing recommended by the Review Panel.

These competency requirements are currently being revisited, and the recently released National Hairdressing Draft Industry Competencies contain the following units of core competence:-

1. Maintain a safe, clean and efficient work environment;
2. Communicate in the workplace A;
3. Receive and direct clients;

4. Prepare clients for salon services;
5. Communicate in the workplace B;
6. Remove chemicals from hair;
7. Schedule and checkout clients;
8. Sell products and services;
9. Consult with clients and diagnose hair and scalp conditions;
10. Treat hair and scalp;
11. Cut hair;
12. Dress (style) hair;
13. Colour hair;
14. Perform permanent wave and chemical relaxation services;
15. Communicate in the workplace C.

On analysis, only the highlighted units of competence are directly related to either the objectives of the Act or to the tasks within the revised definition of hairdressing (as proposed by the Review Panel).

The non-highlighted units of competence do not relate to skills specified in the definition of hairdressing, nor do they relate to issues of health and safety. Rather, they represent competencies sought by industry in their prospective employees. It is clear that employers would rather engage employees who had all necessary competencies, and who required no further training. This is clearly not the purpose of the legislation, and ignores the very real duty placed on employers by the *Occupational Health, Safety and Welfare Act* to ensure that their staff are appropriately trained.

A comment contained in the HBIA submission serves to highlight the reality that National Training Packages are put together on the advice of industry, to serve their need for fully trained personnel, and do not truly reflect the position of the regulatory bodies who seek a minimum level of competence in areas where risk may be posed to the public. The HBIA submission noted:-

> *"In the consultative process for the development for the National Training Packages it was clearly stated by industry that the full range of basic skills were required to ensure employment outcomes and then allow a person to specialise in a certain aspect of their field after qualification."*

The Review Panel would again emphasise that it is vital for specified competencies to relate to the harms sought to be addressed by the legislation. To require a prospective hairdresser to obtain qualification over and above this level would be a misallocation of community resources and an unjustified restriction on competition.

To address this issue the Review Panel recommends that the definition of "prescribed qualifications" in section 4 of the Act be amended to allow the Commissioner for Consumer Affairs to specify acceptable qualifications.

As the Act does not provide for a system of registration, there is no reliable estimate of the number of practitioners or salons in South Australia. The HBIA estimates that there are some 1,400 salons operating in South Australia[33], and the Review Panel is prepared to accept this estimate.

[33] Based on an analysis of entries in the Yellow Pages Directory

Almost all industry submissions asserted that the hairdressing industry is already a competitive one, and that the industry cannot sustain further competition. However, such an argument effectively requires the government to regulate the numbers of participants in competition within the market As noted at 2.3.1 of this Report, regulation of this type is a market control which has a direct negative influence over competitive conditions within a market. To implement such a control would require justification on the grounds that the benefits which may flow to the community would outweigh the costs and that the control is the only way to achieve the objectives of the legislation. Neither of these conditions are satisfied in this case and any arguments which would promote the regulation of participant numbers within this market are not sustainable.

The Review Panel was of the preliminary view that market forces would act to prevent salon owners from employing incompetent persons to work in their salons. Given the degree of competition currently existing within the industry, it was considered that a salon owner would not take the risk that an incompetent person would deliver poor service to a client, who would subsequently take their custom elsewhere.

This was supported to an extent by the HBIA, which stated that "*employers will not employ a person who is not competent in the required skills*", and further:-

> *"Employers employ people with qualifications to ensure the quality of service to maintain their clients. If clients are not satisfied they do not as a rule return to that salon therefore causing a business downturn."*

This is precisely why the Review Panel is of the view that the reduction of qualification requirements to reflect identified risks will have little impact upon the current operation of the market.

The fear of the industry is that it will be inundated with hairdressers competing for custom. There is little evidence that this will occur, in fact the degree of competition highlighted by industry in their submissions would indicate that hairdressing is not necessarily an attractive industry from a business point of view, although the industry does claim that it is suffering from competition from "backyarders".

The DETE submission noted that "*customers will always seek that demonstrated level of competency. Hairdressers need to satisfy their customers in order to ensure continued patronage. This would continue to be the case even in a deregulated environment.*"

The *Hairdressers Regulations 1988* are due to expire on 1 September 2000. Given that the qualification requirements are set out in the regulations, it is the recommendation of the Review Panel that the qualification requirements be examined in more detail by the Office of Consumer and Business Affairs with the intention that the new qualification requirements be incorporated into the regulations when they are re-made on 1 September 2000.

It is further recommended that the Office of Consumer and Business Affairs use the highlighted units of competence from the draft competencies as a basis for industry consultation, on the understanding that units of competence 2,3,4,5,7,8 and 15 will not be specified by regulation as being required in order that a person be deemed "qualified" under the Act.

PART 5 : RESTRICTIONS ON COMPETITION - CONDUCT RESTRICTIONS

5.1 HAIRDRESSING TO BE PERFORMED ONLY BY QUALIFIED PERSON

The clear restriction in the legislation is that only a qualified person may perform hairdressing services, as defined by the Act.

As previous discussion indicates, the breadth of the current definition of hairdressing cannot be justified, and therefore represents an unjustifiable restriction in the hairdressing market.

As an example, under the current definition, a person would need to be a fully qualified person (or an apprentice) in order to wash a client's hair.

However, the Review Panel is of the view that where a risk is identifiable (such as the use of chemicals), and it is deemed that regulation is necessary to address that risk, it is logical that a person be required to be competent to perform that work.

The Review Panel therefore concludes that:-

- in the context of the current definition of hairdressing, the restriction of the performance of hairdressing services to qualified persons is an unjustifiable restriction within the market;

- if the recommended amendments are made to the definition of hairdressing, then the requirement should be retained.

5.2 ONLY A QUALIFIED PERSON MAY BE EMPLOYED TO PRACTICE HAIRDRESSING

Another clear restriction in the legislation is that a person must not employ an unqualified person to carry on the practice of hairdressing.

As previously discussed, the Review Panel considers that the present scope of work regulated by the Act is too broad, and has recommended that it be modified to reflect only those areas which pose potential risks to consumers. If this course of action is accepted, then it follows that the restriction on employment can also be justified as being in the public benefit, as it conforms with the objectives of the Act.

However, in the absence of such amendment to the scope of work, the restriction cannot be justified. The effect of this restriction is to cause a functional separation within the market by refusing entry to those who may competently and capably otherwise offer services. This will impose costs on the wider community through efficiency losses and restrictions on supply.

The Review Panel therefore concludes that:-

- in the context of the current definition of hairdressing, the restriction that a person may only employ qualified persons to carry on the business of hairdressing is an unjustifiable restriction within the market;

- however, if the recommended amendments are made to the definition of hairdressing, then the requirement may justifiably be retained.

PART 6 : ALTERNATIVES TO CURRENT REGULATION

6.1 REPEAL OF THE ACT

Industry participants did not favour repeal of the legislation.

The reasons for this opposition were varied, and demonstrated a lack of understanding of the purpose of occupational regulation in general. As previously noted, many submissions argued on the basis of private costs and benefits, or focussed on issues which, while of relevance to the hairdressing industry, were not relevant to a review of this particular piece of limited legislation (for example a focus on industrial and award issues in the industry). Some submissions blatantly argued that their industry could not sustain further competition.

In support of repeal, the Review Panel considered that a significant body of general law (including health and safety, and general consumer protection laws) has developed since regulation was first introduced in 1936.

The South Australian Health Commission publishes "*Guidelines on the Standards of Practice for Hairdressing*" and "*Guidelines on the Safe and Hygienic Practice of Skin Penetration*" under the auspices of the *Public and Environmental Health Act 1987* (SA). The Guidelines note that:-

> *"The purpose of this guide is to assist local councils in the administration of the Public and Environmental Health Act and Regulations and to assist proprietors to adhere to the principles in the day to day operation of the business so that full protection is afforded to themselves, their operators, clients and the community."*[34]

While the production of the "Guidelines" is an implicit acknowledgment of risk, the fact that they have not been made mandatory and given legislative backing is an indication of an assessment that there is relatively low risk involved.

The *Occupational Health, Safety and Welfare Act 1986* imposes on employers the general duty to provide there employees with a safe work environment, and provides for substantial penalties where this duty is breached. An employer in the hairdressing industry must therefore ensure safe and hygienic work practices and policies are in place. While the duty is on the employer to protect the employee, there will be a complimentary benefit to consumers. It is worth noting that the Act also imposes a duty on the employee to protect his or her own health and safety at work, and to avoid adversely affecting the health or safety of any other person through any act or omission.[35] Again, substantial penalties are involved. The important factor to note, however, is that both the employer and the employee may be liable for a failure to preserve a healthy and safety environment.

The Mens Hairdressing Association submitted:-

> *"At this point in time, the repeal of the Act will harm the industry in general. It would certainly damage what the MHASA is moving towards achieving which will:*
>
> *1. provide a career path in Mens Hairdressing*

[34] South Australian Health Commission, Guidelines on the Standards of Practice for Hairdressing, November 1995, page 1
[35] *Occupational Health, Safety and Welfare Act 1986,* section 21(1)

2. *improve the value of businesses*
3. *create jobs*
4. *provide the public with better trained mens hairdressers."*

This submission fails to realise, however, that these are private and not public benefits, and in no way reflect the objectives of the Act, which is to protect consumers from certain perceived risks. Clearly, the Act does not exist to provide a career path (that is up to the industry itself to provide as a means of attracting new people to the occupation) nor to improve the value of businesses (which is a private benefit).

The creation of jobs is a possible public benefit. However, the submission provides no material on which this assertion is based. Logically, it is difficult to perceive how more jobs could be created in this industry - it is more likely that different jobs will be created.

The pursuit of greater standards may, ironically, not produce a public benefit, but in fact may lead to a public cost. There is a distinction between industry acceptable standards and community acceptable standards. The industry may seek standards which exceed those sought by the community in general. This can lead to an inefficient use of resources, to the ultimate cost of the community.

The DETE submission noted that:-

> *"There are many other trades occupations that do not require registration in order to practice. This is inclusive of the automotive trades where substandard workmanship can cost the life of an individual. These trades have been adequately policed through adequate consumer awareness campaigns and the consumer stamp of approval. This same philosophy could apply to hairdressing."*

Ultimately, as set out in Part 3.6 of this Report, the Review Panel has come to the conclusion that some form of regulation is appropriate in the hairdressing industry for the present. However, this conclusion cannot be justified in the longer term and this matter ought to be revisited in three years, at which time it may well be appropriate to repeal the legislation.

6.2 CO-REGULATION OR SELF-REGULATION

The Government has previously indicated that among the many factors considered pre-conditional to formal industry agreements or delegations is industry coverage:-

> *An occupational group without significant industry membership is unlikely to be granted delegated authority in relation to the industry as a whole. Where there are two or more representative industry groups, the Government considers they should work together on the matter of delegations."*[36]

It is clear from the submissions received that there is little cohesion in the hairdressing industry, with efforts at creating effectual industry bodies having little success (in the context of the number of people employed in the industry) in attracting membership. The HBIA submission noted that the industry is "*extremely fragmented and egotistical*".

[36] Office of Consumer and Business Affairs (SA), *Industry Regulation: the way forward*, August 1996

Nonetheless, the two easily identified industry representative groups have indicated that they are currently engaged in ongoing dialogue to address common issues facing the industry. It has been argued by both parties that the repeal of the legislation may frustrate these attempts.

The Mens Hairdressing Association submitted[37]:-

> *We have already indicated that we are having fruitful discussions with HBIA regarding our goals and that process will continue as both groups can work together to achieve positive outcomes for our members and customers.*
>
> *The retention of the Act will assist that process. There may be a case for further review at some time in the future, by which time we would hope that both disciplines of hairdressing are consulted and indeed have in place mechanisms which may facilitate further change."*

The HBIA stated that as an employer funded body, it would actively pursue the option of self-regulation in the event that the legislation was removed, but noted that the costs associated with this course of action were presently beyond the means of the Association and its membership.

The International Association of Trichologists suggests that the majority of people who initiate legal action as a result of poor hairdressing services do so as a result of inadequate complaint resolution practices on behalf of salons. This is clearly an area where effective industry bodies can play a role in dispute resolution at an early stage. However, industry groups can only (as a general rule) participate in this process where it involves a member of their association.

In the light of submissions received, the Review Panel is of the opinion that there is no currently identifiable industry group which has the capacity or resources to enter into any agreement with the Government allowing a degree of co- or self-regulation, and that these are not currently feasible options.

6.3 AMENDMENT TO THE CURRENT LEGISLATION

The foregoing analysis has demonstrated that the current legislation contains restrictions on competition which cannot be justified on an analysis of public costs and benefits.

The Review Panel therefore concludes that the current legislation requires amendment to remove those restrictions, and has made a number of recommendations in Part 7 to effect the necessary amendments.

[37] Submission H12, page 3

PART 7 : FINAL CONCLUSIONS AND RECOMMENDATIONS

Any review of regulation will normally face significant opposition. As was noted by the Hilmer Report[38],

> *"beneficiaries of the restrictions usually have powerful incentives to resist reform, with those advocating change bearing the burden of establishing that existing restrictions are not justified"*

and further,

> *"regulation that confers benefits on particular groups soon builds a constituency with an interest in resisting change and avoiding rigorous and independent re-evaluation of whether the restriction remains justified in the public interest."*[39]

The Review Panel is firmly of the view that it is not the intention of the legislation to support the training system or the award structure, despite industry attempts to suggest otherwise. Both of these systems, if justified, will exist even in the absence of a licensing or registration system.

The majority of submissions to the Review Panel did not clearly distinguish between public benefits and private benefits which flow from the legislation.

The majority of submissions from industry participants argued that the market for hairdressing services could not sustain further competition. Protection from such competition is clearly a private benefit of the legislation, and should not be considered in a review which focuses on public benefits and costs.

The public benefits identified in submissions were largely limited to the benefits to public health and safety as a result of the legislation. Specifically, submissions identified reduction in the risk of transmission of blood-borne disease and reduction of the risk of harm from the use of chemicals as the chief public benefits arising from the Act. While the Review Panel agrees that public health and safety is a public benefit, it is of the view that the level of risk identified was overstated by industry. Advice from the South Australian Health Commission supports this view.

The Review Panel has concluded that the current definition of "hairdressing" is so broad so as to amount to an unjustified restriction on competition. Specifically, the current definition includes tasks or activities which do not pose any risk to consumers (or which do not require specialised skill or training), or which in would be inappropriate or anti-competitive to restrict only to qualified hairdressers.

The Review Panel has also concluded that the current education requirements are excessive (both in duration and cost), and thus represent an unjustifiably high barrier to entry into the occupation of hairdressing. This is exacerbated by the reality that a significant proportion of the current curriculum is unrelated to training which might address the identified risks. The Review Panel concludes that only educational requirements which specifically relate to the objectives of the legislation should be specified by the legislation.

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[38] Hilmer Report at p.189
[39] Hilmer Report at p.191

Put plainly, the Review Panel was not convinced that there were particularly strong arguments for or against the retention of the legislation. While there is insufficient evidence to suggest that there is a need for continuing regulation of the hairdressing industry, there is also no evidence that the current legislation is imposing significant costs upon the community. This is reflected in the experience in New South Wales, where it is reported that

> *"there is significant anecdotal evidence that there is significant competition in both the women's and men's sectors of the industry…Indeed, in the Sydney CBD there is strong competition in men's hairdressing and licensing has not proved to be an impediment to this competition."*[40]

The HBIA submission validly pointed out that this Review will not affect wage rates under the award system, therefore there is little scope that this area of cost to the employer will reduce. Given that this is a major cost factor for salon owners, there will be little opportunity for cost reductions to be passed on to consumers.

The Review Panel has adopted the view that appropriate amendment to the legislation can assist in promoting competition, while maintaining measures to protect consumers.

7.1 RECOMMENDATIONS

In the light of the conclusions outlined above, the Review Panel makes the following recommendations for amendments to the Act and regulations.

7.1.1 The Consumer Transactions Act 1972

The Review Panel recommends:-

(1) that the *Consumer Transactions Act 1972* be amended to include "hairdressing" within the extended definition of "services".

7.1.2 The Act

The Review Panel recommends:-

(1) that the definition of "hairdressing" contained in section 4 of the Act be amended to read as follows:-

"hairdressing" means the cutting, colouring, setting, permanent waving or other treatment of a person's hair.

(2) that the definition of "prescribed qualifications" contained in section 4 of the Act be amended to allow the Commissioner for Consumer Affairs to specify acceptable qualifications.

(3) that the Act be reviewed within three years with a view to its repeal.

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[40] Submission H9 - Department of Industrial Relations (NSW)

7.1.3 Regulations

The Review Panel recommends:-

(1) that the definition of "*the Hair and Beauty Industry Training Advisory Committee*" contained in regulation 3 be deleted.

Appendix 1

TERMS OF REFERENCE

The *Hairdressers Act 1988* and associated regulations are referred by the Minister for Consumer Affairs to the Office of Consumer and Business Affairs for evaluation and report by September 1999. The review is to focus on those parts of the legislation which restrict competition or which impose costs or confer benefits on business.

Consistent with the Competition Principles Agreement, the review should assess whether any restrictions on competitive conduct represented by the *Hairdressers Act* are justified in the public interest by:-

- identifying the nature and magnitude of the social, economic or other problems that the Act seeks to address;
- identifying the objectives of the Act;
- identifying the extent to which the Act restricts competition;
- identifying relevant alternatives to the Act, including less intrusive forms of regulation or alternatives to regulation;
- identifying which groups benefit from the Act and which groups pay the direct and indirect costs which flow from its operation; and
- determining whether the benefits of the Act's operation outweigh the costs.

1. METHODOLOGY AND TIMETABLE FOR REVIEW

The review should adopt the following procedures **(in accordance with the indicated timetable)**:-

- Appointment of Review Panel and finalisation of draft terms of reference **(by end of August 1998)**
- Initial research identifying relevant resources and materials, including materials on any interstate and overseas equivalents **(by end September 1998)**
- Preparation of a consultation draft report **(by mid-November 1998)**
- Release of consultation draft report for public and industry comment **(by end November 1998)**
- Preparation of Final Report to Minister for Cabinet **(by end-February 1999)**

2. CONSULTATION

The review will consult with industry and consumer representatives, educational institutions and relevant government agencies.

3. THE REVIEW PANEL

The review will be conducted by a review panel consisting of the following persons:-

- Ms Margaret Cross, *Deputy Commissioner (Policy & Legal), Office of Consumer and Business Affairs*;
- Mr Matthew Bubb, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs* (to 8 September 1999)
- Mr Adam Wilson, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs* (from 13 September 1999)
- Ms Kate Tretheway, *Legal Officer, Policy and Legislation, Attorney-General's Department*

4. CONTACT OFFICER

The contact officer for the review is:-

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Appendix 2

LIST OF SUBMISSIONS

George Piazza, Madame Josephine	Grace Catania, Valiage Hairdressers
Ric Catania, Mavericks Hairdressing	Damien Rinaldo, Hair Machine, Norwood
Vincent Rinaldo, Hair Machine	Louisa Venturini, J & L Hair Studio
Lynn Conway	Anna Colombo, Goldilocks Hair
Renato Colombo, Port Hair Design	Merilyn Edginton, Rogert Edginton Salon
Timothy Edginton, Rogert Edginton Salon	Nurses Board of South Australia
Department of the Premier and Cabinet	Hair International Academy
Dial A Hairdresser	International Association of Trichologists
Department of Human Services	Aged Care Organisations' Association
Paul Sherman, Sherman's Hairdressing Academy	Hair and Beauty Industry Employers Association of South Australia
New South Wales Department of Industrial Relations	Department of Fair Trading (New South Wales)
The South Australian Massage Therapists Association Incorporated	Department of Equity and Fair Trading (Queensland)
Human Services Programs & Curriculum Unit, TAFE SA	Department of Education, Training and Employment
Men's Hairdressing Association of South Australia	