



Department of Consumer
and Employment Protection
Government of Western Australia

REGULATION OF THE HAIRDRESSING INDUSTRY IN WESTERN AUSTRALIA

Position Paper

July 2006



Foreword

The hairdressing industry in Western Australia is currently regulated by the *Hairdressers Registration Act 1946*.

Western Australia is the only State or Territory in Australia that has a separate registration scheme for hairdressers and a statutory board to administer the scheme. This framework has been in place since 1946 and has become outdated or irrelevant in protecting the interests of consumers.

There has been debate on the necessity of a Hairdressers' Registration Board for many years from within the industry. Indeed, a review of the role and functions of the Board was undertaken by government officials nineteen years ago and it was recommended that the Board be abolished.

Since that time, three separate Bills proposing the repeal of the *Hairdressers Registration Act 1946* and abolition of the Hairdressers' Registration Board have been introduced to Parliament. On two occasions the Bill did not proceed and on the other occasion it was defeated.

The Government is committed to ensuring that the current system of regulation is brought in line with modern market practices. The changes outlined in this Position Paper will reduce barriers to entry into the industry, streamline the administration of the legislation and result in a more efficient industry.

I believe the position recommended in this paper offers the best balance between the interests of industry and the protection of consumers. I invite your comment on the proposal.

A handwritten signature in black ink that reads "Michelle Roberts".

**HON MICHELLE ROBERTS MLA
MINISTER FOR CONSUMER PROTECTION**

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GLOSSARY

Act	<i>Hairdressers Registration Act 1946 (WA)</i>
Board	The Hairdressers' Registration Board established under section 5 of the <i>Hairdressers Registration Act 1946</i>
Boards Review	The Review of Boards in the Consumer Protection Portfolio
Boards Review Model	The recommended model of regulation for occupational licensing boards in the Boards Review
COAG	Council of Australian Governments
Commissioner	Under the proposal recommended in this Position Paper, the Commissioner will be the Commissioner appointed under the <i>Hairdressers Registration Act 1946</i> . It also refers to the current Commissioner for Fair Trading and Executive Director of Consumer Protection
Consumer Protection	The Consumer Protection Division within the Department of Consumer and Employment Protection
Department	The Department of Consumer and Employment Protection
Minister	The Minister for Consumer Protection
NCC	The National Competition Council
NCP Review	National Competition Policy Review of the Act undertaken on behalf of the Department of Training and Employment
Regulations	<i>Hairdressers Registration Regulations 1965</i>
SAT	The State Administrative Tribunal

1. EXECUTIVE SUMMARY

While there has been a variance of opinion about the role of the Hairdressers' Registration Board (the Board) through the years, there has been consensus about the need for significant change in the regulation of the hairdressing industry.

The legislative framework regulating the hairdressing industry needs to be streamlined to reduce costs and restrictions on industry, while ensuring adequate standards in consumer protection.

Over the years, the *Hairdressers Registration Act 1946* (the Act) has been reviewed in varying contexts by different parties. Between 1994 and 1997, three Bills to repeal the Act, and consequently to abolish the Board, were introduced to the Western Australian Parliament. On one occasion the Bill was defeated and on the other two occasions it did not proceed through the Parliament.

In more recent times, the Act has been reviewed to determine whether any restriction of competition inherent in the legislation is in the public interest. The National Competition Council has held that Western Australia has not met its obligations under the Competition Principles Agreement in relation to hairdressers' registration, and the State has consequently incurred financial penalties by way of reduced competition payments from the Commonwealth.

The Act has also been reviewed as a part of the 'Review of Boards in the Consumer Protection Portfolio' (the Boards Review). The Boards Review was commenced in response to various government initiatives, including the Machinery of Government reform program, the establishment of the State Administrative Tribunal and other inquiries into consumer protection boards.

The Boards Review recommended that many of the Board's functions be transferred to Consumer Protection except for decision-making powers in respect to the granting and renewal of licences. Legislation is currently being drafted to implement the recommendations of that review, which are expected to commence in late 2007.

Most recently, the regulation of various occupational areas has been under the spotlight. At a meeting held in February 2006, the Council of Australian Governments reached agreement on a package of measures designed to underpin a new national approach to apprenticeships, training and skills recognition in Australia to alleviate skill shortages.

This paper outlines the current regulatory regime for the hairdressing industry in Western Australia, the types of regulation adopted in other Australian jurisdictions, some options for the future regulation of the industry here and, makes a recommendation for a scheme that best suits Western Australia's circumstances.

It is proposed in Part 6 of this paper that the system of registration currently administered by the Board be replaced with a simplified system of registration of suitably qualified hairdressers, administered by Consumer Protection. This system will include provisions to remove from the industry persons unsuitable to practise hairdressing to ensure consumers remain protected. It is also proposed that registration will be renewable every three years. This, along with the elimination of costs associated with administering the Board, will allow registration fees for hairdressers to be significantly reduced.

1.1 Submission process

This Position Paper is being distributed for the purposes of facilitating community and industry engagement about the need to reform the Western Australian hairdressing registration scheme. By undertaking this consultation process, the Department hopes to obtain comment from a wide range of sources.

The submission process will consist of the following steps:

- (a) a call for public submissions will be advertised on Consumer Protection's website;
- (b) a mail out to targeted industry and consumer stakeholders;
- (c) a mail out to every registered hairdresser in Western Australia advising how to contact the Department to obtain the Position Paper;
- (d) an analysis of submissions received and of other available information; and
- (e) the development of recommendations for consideration by the Minister for Consumer Protection regarding the reform of the hairdressing industry.

Submissions in response to this Position Paper should be made in writing and either mailed, faxed or e-mailed to the Department.

Please forward your submission to:

Review of the Regulation of Hairdressers
Policy and Education Directorate
Consumer Protection
Locked Bag 14
CLOISTERS SQUARE WA 6850

Phone: 9282 0541
Fax: 9282 0727
Email: hrbposition@docep.wa.gov.au
www.docep.wa.gov.au

The closing date for submissions is: **20 October 2006, 5:00 pm.**

Tips on making a submission:

- Wherever possible, provide evidence or examples to help demonstrate your views or suggestions.
- Use clear and concise terminology.
- Ensure that the submission addresses only matters related to practises within the hairdressing industry.

Please note that when you lodge your submission it will become a public document that can be viewed by others and may be quoted for the purposes of this review. If you do not want your submission to be made public or to be quoted, please advise Consumer Protection accordingly in a covering letter. Please be aware that under the *Freedom of Information Act 1992 (WA)*, the right of third parties to access the documents of most government agencies results in the Department being unable to guarantee the confidentiality of your submission.

2. BACKGROUND

2.1 Regulation of the hairdressing industry in Western Australia

The *Hairdressers Registration Act 1946* (the Act) provides for the establishment of the Hairdressers' Registration Board (the Board) to administer a scheme of registration for hairdressers in Western Australia.

The registration of hairdressers in Western Australia currently only applies in the Perth metropolitan area, the South West Land Division and within eight kilometres of the Kalgoorlie GPO.

2.1.1 The Board

The power and duties of the Board are to:

- hold examinations and to submit to the Minister for Consumer Protection (the Minister) a panel of persons for appointment as examiners for each class of hairdressing;
- decide upon the dates, times and locations for examinations to be held for each class;
- issue or cancel certificates and badges of registration for each class;
- take proceedings for offences against the Act and the *Hairdressers Registration Regulations 1965* (the Regulations);
- do any other act, exercise any other power or perform any other duty necessary for carrying the provisions of the Act into effect; and
- recommend to the Commissioner of Health standards of hygiene and sanitation to be observed in premises where hairdressing is practised.

Additionally, the Board has powers to employ staff or pay persons to carry out the purposes of the Board, which include:

- conducting examinations;
- registering hairdressers and keeping a register of hairdressers according to class (and cancelling registration);
- applying fees and keeping financial accounts; and
- reporting annually to the Minister.

The Board consists of five members:

- a Chairperson with no pecuniary interest in hairdressing;
- a hairdresser nominated by the Master Hairdressers' Association of WA;
- a hairdresser nominated by the Master Ladies Hairdressers' Association of WA; and
- two hairdressers nominated by the Hairdressers' and Wigmakers' Employees Union of Workers.

2.1.2 Registration as a hairdresser

To be registered as a hairdresser, a person must satisfy the Board that (s)he:

- is a person of good character; and
- has completed the prescribed course of training and passed the appropriate examinations; or
- has completed appropriate training outside Western Australia and passes any examination required by the Board.

There are currently five classifications of registration. They are:

- men's hairdresser (inclusive);
- men's hairdresser (limited);
- ladies' hairdresser (inclusive);
- ladies' hairdresser (limited); and
- combined hairdresser.

Additionally, all premises where hairdressing is practised must have a principal hairdresser nominated to be present and in control of each prescribed class of hairdressing.

To be registered, a person must also pay to the Board any prescribed fees. These include an annual registration fee, examination fees and fees for certificates. The Board applies these fees to the expenses of the Board in carrying the Act into effect.

2.1.3 Requirements of the Act

It is an offence to practise hairdressing or use the title "hairdresser" unless registered under the Act. The penalty is currently \$100. The penalty for contravention of the Regulations or any other provisions of the Act is \$20.

The Board may commence disciplinary proceedings in the State Administrative Tribunal (the SAT) against a hairdresser who:

- has obtained his or her registration by fraud or misrepresentation;
- has been convicted of an offence against the Act or regulations;
- has been convicted of an offence that renders him or her unfit to practise as a hairdresser; or
- is no longer a fit and proper person to practise as a hairdresser.

If proper cause for disciplinary action exists, the SAT may suspend or cancel a hairdresser's registration.

3. PAST AND PRESENT REVIEWS OF REGULATION OF THE HAIRDRESSING INDUSTRY

The Act has been reviewed by various bodies in varying contexts over the years. The following is a discussion of those reviews.

3.1 Hairdressers Registration Repeal Bills

3.1.1 Pre 1994 Reviews of the Act

In May 1987, a review of the role and functions of the Board was undertaken by Government and it was recommended that the Board be abolished. However, hairdressing industry representatives argued that the Board was of value, and consequently, the Board was retained on condition that the Board's role and functions be kept under review. A further review, conducted in 1990, also recommended the abolition of the Board, but again, the industry opposed this option. The Board itself was then given approval to undertake a review. It recommended that the Act be replaced with new legislation, and that the Board be replaced with a tripartite body.

3.1.2 1994 Repeal Bill

In 1994, the Hairdressers Registration Repeal Bill was presented as a pre-legislative proposal to the Legislative Council. It proposed the repeal of the Act and the abolition of the Board. The Bill was referred to the Standing Committee on Government Agencies (the Committee) to allow for wide consultation and for all interested parties to have input into the matter.

The Committee subsequently reported in 1995 that:

- *“Whatever form of regulation is finally adopted, it should be directed towards licencing [sic] both hairdressers and the working environment. The procedure should be administrative; the grant of a license [sic] as of right if the criteria for registration are met, and revocation for wilful, persistent or gross breach of the license [sic] conditions. In extreme cases, revocation would prevent a licensee from operating in the industry either for a defined period or permanently.”*
- *“...the Committee is firmly of the view that the Minister establish an advisory body, representative of all sectors of the industry, to enable the industry to express its views of matters affecting hairdressing whether it be in relation to training, accreditation, health and safety. The committee was left with the impression that hairdressers, despite the existence of [the Board] and the professional associations, lacked an effective voice and that new, more representative consultative mechanisms are required.”*

3.1.3 1996 Repeal Bill

In 1996, the Legislative Council passed the Hairdressers Registration Repeal Bill. However, it did not proceed in the Legislative Assembly beyond the Second Reading.

3.1.4 1997 Repeal Bill

In 1997, a repeal Bill unchanged from the 1996 Bill was introduced to the Legislative Assembly and read a second time. It was debated in April 1997 and passed in June 1997.

The Bill was introduced to the Legislative Council and had its second reading in September 1997. It was referred to the Standing Committee on Public Administration (SCPA) to be considered in more detail. The SCPA reported to the Legislative Council in December 1997.

The main recommendations of the SCPA of relevance were that:

- the Board be abolished;
- an education strategy increasing consumer awareness of grievance procedures in situations where clients were dissatisfied be developed;
- an education strategy be developed to increase consumer and industry awareness of issues such as occupational health;
- the Department of Training keep industry updated regarding services available within industry;
- the Minister establish an advisory body with industry representatives and consumers;
- consideration be given to developing a Hairdressing Industry Training Council;
- consideration be given to creating an independent body (to co-regulate with the Hairdressing Industry Training Council) to assess and verify qualifications, competencies and recognition of prior learning. The body should be granted the power to license and collect fees;
- that the independent body above monitor and inspect premises;
- surplus money in the Board account at the time of the passing of the Bill be used to set up a mechanism to assess and ensure recognised national standards of competency;
- surplus moneys in the Board account at the time of the passing of the Bill be used to set up the co-regulation scheme; and
- a code of practice and a trainee of the year award scheme be developed.

The Bill was subsequently defeated in the Legislative Council. As a result, the legislation remains fundamentally unchanged since it was first reviewed in 1987.

3.2 National Competition Policy Review

3.2.1 Background

As a requirement of the Competition Principles Agreement agreed to by all Australian Governments, the Western Australian Government had an obligation to review all new and existing legislation to ensure that any anti-competitive effects of the legislation were in the public interest. A National Competition Policy Review of the Act and the Regulations (the NCP Review) was undertaken by the Department of Training and Employment in 2001.

The Competition Principles Agreement¹ stated that each review should:

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

The guiding principle of the Competition Principles Agreement² was that legislation should not restrict competition unless it could 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.

The NCP Review recommended that:

- the registration requirements in the Act be retained;
- the limitation of the Act to the South West Division (and Kalgoorlie) be removed and the applicability of the Act be extended to cover the entire State;
- the category of “principal”, as stipulated in section 25(1) of the Regulations, be removed;
- reference to the existing hairdressing classes, as stipulated in section 6 of the Regulations, be removed and a head of power be created within the Act, which empowers the Board to create new certificates of practice for hairdressers;
- the current restrictions stipulated in section 5(4) of the Act, in which only certain associations can nominate members of the Board, be removed; and
- that section 4(2) of the Act be reworded with reference to “Perth Technical College” being removed and replaced with “a Registered Training Organisation”.

3.2.2 National Competition Council Assessments

In 2001, Western Australia reported to the National Competition Council (NCC) that a national competition policy review by independent consultants was underway. The NCC determined in 2002 that as the Act was not reviewed and reformed by the deadline of 30 June 2002, it would finalise its assessment of Western Australia’s competition policy compliance in 2003.

¹ Clause 5(9)

² Clause 5(1)

The Western Australian Government endorsed the recommendation made in the NCP Review to retain the hairdressers' registration scheme in 2003. The NCP Review found that the public interest was best served by requiring that hairdressers were qualified to ensure hygiene and sanitation standards, to reduce the risk of physical harm to customers and provide higher quality service. Registration under the scheme required the completion of an appropriate course of training and the passing of examinations. In addition, the NCP Review recommended that the Board be given discretionary power to create different classes of registration.

The NCC considered "that the review did not meet the requirements of the Competition Principles Agreement as the review's recommendations to retain restrictions on competition were not supported by evidence demonstrating that the benefits of the restriction to the community as a whole outweigh the costs. In addition, the review did not adequately consider less restrictive alternatives to the current registration system."

Furthermore, the NCC reported that the NCP Review:

- did not provide evidence that there would be any benefit (from a public interest point of view) from extending registration to cover the whole State;
- did not consider alternative means of developing *minimum quality standards* or provide evidence to demonstrate that the provision of discretionary power to the Board, to create different classes of registration, would provide a net benefit to the community; and
- *"did not consider a range of feasible alternative approaches to registration. Negative licensing, for example, is an alternative that is potentially less restrictive and less costly than the current registration system. While negative licensing provides a lower level of consumer protection than traditional registration it may be appropriate where the potential for serious harm is not great. Under such a scheme all hairdressers meeting minimum quality standards would be permitted to practise unless they were placed on a register of persons ineligible to practise (such as for serious occupational health and safety breaches). Negative licensing was not considered by the review."*

As a result of the NCC assessing that Western Australia did not meet its obligations under the Competition Principles Agreement in relation to hairdressers' registration, the State incurred an unspecified (because it is part of a pool) financial penalty by way of reduced competition policy payments from the Commonwealth.

The State was similarly penalised in 2004 and 2005. Other relevant comments made by the NCC during 2004 were that:

- Western Australian had not demonstrated a net public benefit from regulation (only that registration left consumers in regulated areas no worse off than those in unregulated areas);
- *"..it is possible to require hairdressers to hold appropriate qualifications without requiring registration (as in New South Wales, for example). Such a requirement, in conjunction with general health and safety obligations, appears to offer consumers adequate protection";* and

- negative licensing procedures that empower consumers to identify operators that are unqualified or semi-skilled are appropriate.

3.3 COAG commitments pertaining to the skills shortage initiative

3.3.1 Background

The Council of Australian Governments (COAG) has published Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies. These guidelines were last amended in June 2004 and state that standard setting bodies should aim to:

- achieve minimum necessary standards;
- provide evidence that the competitive effects of regulation have been considered;
- demonstrate that the benefits of regulation outweigh the likely costs;
- minimise any restrictions to those which are necessary in the public interest;
- develop standards or regulatory measures in a way that minimises the financial impact of administration and enforcement of regulation on governments and the sectors of the community that will be affected by them; and
- achieve the greatest degree of compliance at the lowest cost to all parties.

3.3.2 A New National Approach to Apprenticeships, Training and Skills Recognition

At a meeting held in February 2006, COAG reached agreement on a package of measures designed to underpin a new national approach to apprenticeships, training and skills recognition to alleviate skill shortages.

Some key initiatives relevant to the regulation of the hairdressing industry are that:

- a new COAG Reform Council will replace the NCC to report on annual progress in implementing the national reform agenda; and
- new measures will be put in place to enable people with trade qualifications to move more freely around Australia without undergoing additional testing and registration processes. By December 2008, all licensed occupations where people normally receive certificates and diplomas will have more effective mutual recognition arrangements.

3.4 Review of Boards in the Consumer Protection portfolio

3.4.1 Background

In December 2001, a *Review of Boards in the Consumer and Employment Protection Portfolio* (the Boards Review) was commenced in response to various government initiatives, including the Machinery of Government reform program and the establishment of a the SAT. The Boards Review also took account of recommendations arising from the Gunning Committee of Inquiry into Fair Trading Boards, and the findings of the Temby Royal Commission into the Finance Broking Industry.

In early 2002, the Board joined the Consumer and Employment Protection Portfolio and in consequence became a part of the Boards Review (with seven other occupational licensing boards).

Two discussion papers were released in 2002 regarding the various options for reform of the eight occupational licensing boards subject to the Boards Review. In June 2004, Minister Kobelke announced the findings of the review and the Government's intention to implement a new model of regulation.

3.4.2 The Boards Review Model

The Boards Review model has the following main features:

- the boards to retain responsibility for making decisions on licence applications and renewals, as well as on consumer claims against fidelity guarantee or industry compensation funds (where relevant);
- Consumer Protection to administer funds raised under each Act through formal resource agreements negotiated annually with each board;
- Consumer Protection to assume responsibility for compliance, advice and policy in the regulated occupations;
- Consumer Protection to become the employing authority for all boards' staff;
- Consumer Protection to be responsible for all administrative and operational processes (eg. collecting fees, processing licence application forms, issuing licences, etc);
- the boards to provide advice to Consumer Protection and the Minister on Consumer Protection's conduct of the regulatory function;
- board members to be appointed on the basis of their qualifications rather than their representative status; and
- increased consumer representation on boards.

3.4.3 Acts Amendment (Licensing Boards and Consumer Protection) Bill

In June 2003, Cabinet approved the drafting of a Bill, to be known as the *Acts Amendment (Licensing Boards and Consumer Protection) Bill* (the Bill), to implement the Boards Review model. Parliamentary Counsel commenced drafting shortly after this approval had been obtained.

A Final Report of the Boards Review was prepared in February 2004 but was not released due to the need to take account of the impending establishment of the SAT. In June 2004, the Minister announced the major recommendations of the Boards Review, including a model for the future role of the boards. Delays in the passage of the SAT legislation led to the drafting of the Bill being placed on hold. The SAT commenced operation on 1 January 2005 and in April 2005 the Final Report of the Boards Review was released.

With regard to the regulation of hairdressers, the drafting of the Bill has been based on the Boards Review model, that is, continuation of the registration of hairdressers and the continued existence of the Board. In January 2006, draft amendments to the Act to implement the Boards Review model were released for comment. The drafting of the remainder of the Bill is continuing. It is expected that the Bill will be introduced in the 2007 Autumn Session of Parliament and become effective in late 2007. If the proposal set out in this paper is supported, one option for its implementation is to include the amendments to the Act in this Bill.

4. REGULATION OF HAIRDRESSERS IN OTHER JURISDICTIONS

Western Australia is the only State or Territory in Australia that has a separate registration scheme for hairdressers and a statutory board to administer the scheme. This framework has been in place since 1946.

In 2006, New South Wales and South Australia are the only other jurisdictions with legislation regulating hairdressers. Victoria (prior to 2001) and Tasmania (2002) have repealed their legislation regulating the hairdressing industry and Queensland discontinued licensing hairdressers (2004) and instead license premises that undertake higher risk procedures (eg. skin penetration).

4.1 South Australia & New South Wales Models

The *Hairdressers Act 1988 (SA)* (the SA Act) provides that an unqualified person who carries on the practice of hairdressing is guilty of an offence. It is also an offence to employ an unqualified person to carry on the practice of hairdressing. Penalties are \$1,000 for a first offence and \$4,000 for a second or subsequent offence.

A qualified person is a person who:

- was registered under the repealed *Hairdressers Registration Act 1939 (SA)*;
- holds qualifications declared by the regulations to be prescribed qualifications; or
- has been determined upon application to the Commissioner for Consumer Affairs to have qualifications, training or experience that the Commissioner considers appropriate to carry on the practice of hairdressing. An application must be made to the Commissioner for such a determination.

The SA Act also provides that the regulations may:

- exempt, conditionally or unconditionally, certain classes of persons from all or any of the provisions of the Act; and
- regulate, restrict or prohibit the practice of a prescribed branch of hairdressing by persons of a prescribed class.

A similar regulatory regime is in place in New South Wales. The principal area of difference relates to the process of determining whether a person is adequately trained to pursue the trade of hairdressing. Under the *Hairdressers Act 2003 (NSW)*, if a person does not have the prescribed qualifications, the Vocational Training Tribunal (rather than the Commissioner for Consumer Affairs) will make that determination.

5. OPTIONS FOR REGULATION OF HAIRDRESSING IN WESTERN AUSTRALIA

5.1 Amend the Act in line with Boards Review Proposal

5.1.1 Model

Under the Boards Review model endorsed by Cabinet in June 2003, the scheme of registration of hairdressers in Western Australia under the *Hairdressers Registration Act 1946* would remain essentially unchanged.

The principal points of difference relate to Consumer Protection assuming responsibility for compliance, advice and policy, and becoming the employing authority for the Board's staff. Consumer Protection would also be responsible for all administrative and operational processes (eg. collecting fees, processing licence application forms and issuing licences).

There would be a change in the Board's composition under the Boards Review model by the addition of two consumer representatives. The Board would remain responsible for making decisions on who is granted a licence, including renewals, under the Act.

Funds raised under the Act would be kept separately from Consumer Protection funds. Each year, the Board and the Department would be required to negotiate a 'resource agreement' to allocate funds to regulate the industry.

5.1.2 Benefits

- The Board's decision-making powers concerning the grant and renewal of licences ensures that industry knowledge and expertise is retained in the regulatory process.
- There is a significant role for the Board in providing advice to the Minister and the Commissioner appointed under the Act on Consumer Protection's conduct of the compliance, education and advice functions. This allows for industry oversight and consumer input into the regulatory process.
- One consistent message is provided to consumers and industry for the eight industries included in the Boards Review.
- Greater protection for consumers is achieved by bringing board investigators under Consumer Protection, leading to improved enforcement of the *Fair Trading Act 1987*.
- Accountability is improved (the Department and the Minister will be directly responsible to the Parliament).
- Disciplinary action may be taken against persons who are not fit and proper to practise as hairdressers (suspension or cancellation of licence).
- A register of hairdressers will be publicly available, allowing the public to identify those persons permitted to practise under the Act.
- Licensing fees are used to fund the regulation of the industry.

- The Board and staff can access the services of a large department (eg. media, legal, publications, information technology and library services).

5.1.3 Disadvantages

- As the potential for serious physical or financial harm in the hairdressing industry is low, continuation of a higher than essential level of regulation for hairdressers is seen as unnecessary.
- Continuation of competition restriction may not satisfy the concerns of the NCC.
- The Boards Review model may be more complex to administer than other models.

5.2 Amend the Act in line with NSW and SA Models

5.2.1 Model

Under this proposal the Act would be amended to:

- abolish the Board;
- provide that it is an offence to practise as a hairdresser unless qualified and impose an appropriate penalty;
- outline what qualifications and experience are required in order to be considered “qualified”;
- nominate a body or person (probably the Commissioner for Fair Trading with the assistance of an advisory committee) who may determine whether a person is appropriately qualified if they hold qualifications or have experience other than those prescribed;
- provide for exemptions from the application of the Act (eg. apprentices, medical practitioners and health care professionals); and
- regulate, restrict or prohibit the practise of a prescribed branch of hairdressing by prescribed classes of persons.

5.2.2 Benefits

- Administrative costs and burdens on hairdressers would be reduced.
- It complies with NCC requirements and would be likely to result in the release of NCP payments to the State.

5.2.3 Disadvantages

- A person who holds appropriate qualifications cannot be prevented from practising as a hairdresser even though they might not be considered fit and proper to practise.
- In the absence of a register, it is difficult for consumers to identify whether a person is permitted to operate as a hairdresser under the legislation.

5.3 Amend the Act to provide for Simplified Registration with Controls

5.3.1 Model

A third option would be to implement a simplified scheme of registration, coupled with a capacity to remove the registration of persons considered unsuitable to remain in the industry.

Under such a scheme:

- the Board would be abolished;
- hairdressers would be required to apply to the Commissioner for registration;
- registration would be automatic upon production of evidence of having completed appropriate training or qualifications;
- the Commissioner could refuse to register a person when aware of past misconduct that renders the person unfit to be registered;
- registration would be granted by the Commissioner (assisted by an advisory committee) if a person holds other appropriate training or qualifications;
- a register of hairdressers would be publicly available;
- legislation would determine that it is an offence to practise as a hairdresser unless registered;
- the Commissioner could apply to the SAT for cancellation of the registration of a hairdresser if it is considered that the person is not fit and proper to carry on business as a hairdresser (eg. if a person has committed a serious criminal offence or obtained registration by fraud or misrepresentation); and
- hairdresser registration fees would be deposited into the State Government's Consolidated Fund, with a separate appropriation made each year to cover the costs of administering the new scheme.

5.3.2 Benefits

- Consumers would continue to be protected by providing for the cancellation of the registration of persons who are considered to not be fit and proper to practise as hairdressers.
- Consumers would be protected by providing for the Commissioner to have the power to refuse to register unfit persons.
- Barriers of entry to the industry are reduced, which may satisfy some or all of the NCC concerns, and result in the release of NCP Payments to the State.
- Accountability would be improved through:
 - removal of industry members' direct involvement in the licensing/compliance process, thereby removing any perceptions of bias or 'industry capture';
 - easier balancing of consumer and industry interests to produce outcomes in the 'public interest' for Consumer Protection and the Minister.

- Reduced cost of regulating the industry by removing the costs associated with maintaining a separate Board, payment of Board members' fees, as well as a shift from proactive monitoring of the industry to a complaints based system.
- Reduced registration fees for hairdressers.
- The register would be publicly available, allowing consumers to identify who is permitted to practise as a hairdresser.

5.3.3 Disadvantages

- Board members with industry experience may be better qualified to assess the suitability of persons applying for registration.
- Subject to constraints imposed by public service rules, the Department may be less flexible and responsive to industry (or at least, there may be a perception of less flexibility).
- Departments have limited resources and must prioritise according to wider areas of concern.

5.4 Repeal the Act

5.4.1 Model

A fourth option would be to repeal the Act and de-regulate the hairdressing industry. Under these circumstances, consumers would remain protected by the *Fair Trading Act 1987*, which requires traders to provide services to a reasonable level of skill. The general health and safety obligations for industry would continue to apply under the *Health Act 1911* and the *Occupational Safety and Health Act 1984*.

5.4.2 Benefits

- There would be no administrative costs and burdens on hairdressers would be reduced.
- Barriers to entry would be removed, therefore, it would be compliant with NCC requirements, resulting in the release of NCP payments to the State.

5.4.3 Disadvantages

- There would be no penalties to deter persons practising as unqualified hairdressers.
- Persons could not be prevented from practising as hairdressers even though they might not be fit and proper to practise (eg. if they have been convicted of a serious criminal offence).
- It would be difficult for consumers to ascertain whether hairdressers were qualified.
- Industry oversight would be lacking.

5.5 Comparison of models

The Boards Review model is seen as suitable for the seven other occupational licensing boards subject to the Boards Review because risks to consumers in those industries are significant. By contrast, the potential for serious physical or financial harm to consumers who use the services of hairdressers is relatively low.

The Boards Review model was recommended for the hairdressing industry primarily on the grounds of consistency with the other industries subject to the Boards Review. However, given the low level of consumer risk and the recent COAG developments, a more minimal scheme of regulation to regulate this industry would appear to be appropriate.

The concerns regarding the adoption of either the South Australia/New South Wales model or the model to repeal the Act relate to their reduced levels of consumer protection. The principal concern is that they do not contain a mechanism to remove persons not considered fit and proper to practise hairdressing. The advantages of these models are that the NCC has determined that they are in keeping with NCP principles, and as such, States with these models receive their full competition payment entitlements from the Commonwealth.

The model of simplified registration, coupled with a capacity to remove the registration of persons considered unsuitable to remain in the industry, would appear to be the model that best balances the interests of consumers and industry in Western Australia. Under this model, the costs of regulating the industry and to individual hairdressers will be reduced. At the same time, consumers continue to be protected through the provision of an up-to-date public register of qualified hairdressers, and a mechanism to prevent or remove persons not considered to be fit and proper to practise in the industry.

6. RECOMMENDATION

The legislative framework regulating the hairdressing industry needs to be streamlined to allow for lower costs and less restrictions on industry, while ensuring adequate standards in consumer protection.

Part 5 of this paper concluded that the most appropriate model for the regulation of the hairdressing industry in Western Australia is a system of simplified registration with controls. Part 6 discusses the model in detail, including issues concerned with its implementation. Your views on the following sections are invited, including any commentary you might have on practical implementation aspects of the proposal.

6.1. Application of Act

At present, the Act provides for the application of the Act to be extended to any area of the State on proclamation by the Governor. It is proposed that this power be transferred to the Regulations.

There are no current or planned proposals to extend the application of the Act to other areas within the State. Following the implementation of the proposed model, this position may be re-considered. However, before any decision is made in this regard, stakeholders across the State will be fully consulted.

6.2 Registration

6.2.1 Registration process

- All hairdressers currently registered in Western Australia will remain registered under the proposal.
- Persons seeking to become a hairdresser will be required to apply to the Commissioner for registration. The Commissioner will automatically register hairdressers when evidence is produced of an appropriate qualification having been completed (eg. a Certificate III in Hairdressing).
- The Commissioner will have the power to refuse to register a person when aware of past misconduct that renders the person unfit to be registered.
- The Commissioner will determine registration in cases where a person holds other appropriate training or qualifications (eg. overseas qualifications).
- The Commissioner may establish an advisory group that includes industry members to advise on appropriate qualifications, training and experience to become a registered hairdresser in this State.

6.2.2 Registration fees

- A renewal fee will be payable every three years instead of annually, thereby reducing administration costs.
- It is proposed that overall fees will be lower for the registration period. Current annual registration fees are \$90.30 per annum as a principal hairdresser and \$62.55 per annum as a senior employee.

- Nomination of principals at premises will no longer be required.

6.2.3 The register

A register of hairdressers will be available for members of the public to check that a hairdresser is registered.

6.3 Penalties

It is proposed that penalties to deter unqualified persons from practising as hairdressers will increase substantially, from \$100 to \$5,000.

6.4 Compliance

The Commissioner will be able to apply to the SAT for the cancellation of the registration of a hairdresser where the Commissioner is of the opinion that the person is not fit and proper to carry on business as a hairdresser (eg. if a person had committed a serious criminal offence or obtained registration by fraud or misrepresentation).

Registered hairdressers will be required to notify Consumer Protection if they have been found guilty of any indictable offence. The Commissioner will then decide whether the hairdresser's registration should be removed.

Under the proposal, the compliance regime will shift to a complaints based system. The Commissioner will investigate complaints to:

- ensure persons operating in the industry are registered; and
- ascertain if registered persons are fit and proper persons to remain in the industry.

The Act will also be amended to provide for penalties to be applied to owners/managers of salons who employ unregistered persons.

6.5 Transfer of assets and staff

Arrangements will be made to transfer Board staff and assets to the Department.

6.6 Impact of proposed regulatory changes

The proposed simplified system of registration will reduce barriers to entry to practise as a hairdresser in Western Australia by removing requirements for:

- hairdressers to satisfy good character tests prior to registration;
- the conduct of examinations; and
- salons having to appoint principals for each class of hairdresser practising in the business.

A simplified registration system and the abolition of the Board will allow Western Australia to be better placed to support COAG measures aimed at allowing people with trade qualifications to move more freely around Australia, without undergoing additional testing and registration processes.

The proposed position reduces the financial impact of regulating the hairdressing industry. It removes the administrative costs associated with maintaining a separate Board and will reduce registration fees paid by individual industry members.

Consumers will continue to be protected under the proposed position as persons not considered to be fit and proper to practise as hairdressers will be able to be removed from the industry. Additionally, a register of hairdressers will be made available to the public, allowing consumers to identify who is permitted to practise as a hairdresser.

By transferring the investigation of complaints to Consumer Protection and maintaining an accurate register, the proposal will continue to provide a system of compliance at a reduced cost to consumers, industry and government.

The proposed simplified system of registration offers the best balance between the needs of consumers, the needs of industry and the State's obligations under both NCP and the recent COAG decisions on skills shortages.