

# Governing the Professions: Does Self-regulation Equal Self-interest?

GRAEME SAMUEL

**P**ROFESSIONALS such as doctors, lawyers, vets, architects, nurses and pharmacists deserve to hold respected and esteemed positions within our society.

Do they also deserve unique market privileges? Should they be excluded from competition and market disciplines? Probably not.

Whatever service they are delivering, whether it be brain surgery or conveyancing, the fact is that professionals work in a demand-driven marketplace—the workings of which can be easily manipulated.

Consider the hypothetical consequences of, for example, a decree by a new 'National Plumbers Association' that, as of next year, the number of apprentice plumbers would be kept to a certain limit—regardless of demand.

Basic economics tells us that, as the number of plumbers decreased, the availability of plumbing services would fall, waiting times would increase and plumbers could start to charge more and more for their services. Of course this would never happen, the community would never stand for it.

Yet, this power of market manipulation is what many professions have had since almost time immemorial. Their 'self-regulatory' powers allow them to set the rules and regulations for themselves. The powers can include, among other things, stipulating who can enter the profession, how they practise, qualification requirements, training requirements, locational requirements, restrictions on advertising and disciplinary processes.

Simply through virtue of their qualification, professionals have been considered to be deserving of market privileges and justified in excusing themselves from competition.

Obviously, particularly in the health and legal professions, we would want to ensure that professionals are competent and appropriately qualified, and that public health, safety and financial integrity are protected. Consumers of these services need to have confidence in the competence of professionals, because it is difficult for consumers to make judgements about these things without help.

But are professionals really so different from other service providers that we should not even question some of their regulatory practices?

For example, I know nothing about cars. When I take my car to a garage I have no way of knowing whether the mechanic who will be working on it is any good or not. I have to make an assumption which, I suppose, I base on their qualifications, the reputation of the establishment, membership of industry associations that assure quality and personal references. General prohibitions in the *Trade Practices Act* and other consumer legislation on anti-consumer market behaviour, such as misleading conduct, help me to make my judgement.

When I visit a doctor I again need to make an assumption based on not dissimilar criteria. The difference is, of course, that the potential for damage should the workmanship be incompetent or unethical is far greater.

Thus, government has an absolutely legitimate role to regulate the

professions in order to protect the public interest.

Equally, however, for the public to receive quality service at the lowest possible cost they have every right to require the Government to ensure that any regulation has a clear objective of harm minimization and is the minimum necessary to achieve that objective.

Consider the issue of training places for the medical specialities. As a general rule, the Specialist Colleges influence training numbers, either directly, or by having the responsibility for accrediting training hospitals.

Anaesthesia training is a good example. The Australian Medical Workforce Advisory Council reports that one in seven anaesthesia positions in public hospitals is permanently vacant. Data from the Federal Department of Health and Aged Care demonstrate that anaesthetists charge around \$100 million a year above the Medicare benefits and on average earn around \$250,000, although salaries can be much higher. It doesn't take much to detect a skewed demand/supply relationship there.

We also know that for a hospital to be accredited to train anaesthetists the College of Anaesthetists requires that there be a stipulated number of administrative staff per trainee, a library, designated exclusive study areas etc., etc. In Victoria, only four hospitals outside of the metropolitan area are allowed to train anaesthetists.

Consumers have every right to ask that the Government ensure that, for example, a study room in the hospital is a totally necessary requirement to train anaesthetists to an adequate

standard. To ensure that restrictions on training are there to protect the public—and do not simply serve to keep supply low and thus price high.

Another example is the restriction that prohibits new pharmacies from establishing within 2 kilometres of another pharmacy. Is this really protecting the public interest or could it actually be working against the public interest? Considering that the impact of this law is that populations in the older suburbs usually have some price competition and choice between pharmacies (because they were established before the geographical restrictions were introduced), residents of newer (and usually less affluent) suburbs will only ever have one pharmacy and no price or service competition.

These debates seem even stranger when one considers areas which have been reformed in some States but not in others, such as reservation of practice for lawyers.

In South Australia, since the turn of the century, licensed 'conveyancers' have been permitted to provide conveyancing services. In New South Wales, this area of practice was deregulated in the early 1990s. Since then, conveyancing costs have come down by an average of 17 per cent, regardless of whether they are provided by a licensed conveyancer or by a lawyer, a saving to consumers of about \$86 million a year. Yet, conveyancing is still reserved practice for lawyers in Queensland, Tasmania and the ACT.

Fear of uncharted ground is one thing, but when you have the luxury of observing successful deregulation in a neighbouring jurisdiction one has to ask how continued regulation and higher prices can be justified to consumers.

Asking these questions is essentially what National Competition Policy is all about.

*Graeme Samuel is President of the National Competition Council.*

**I P A**

# The Role of Dry Philosophy

---

JOHN HYDE

---

The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood . . . . Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually slaves to some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back.

John Maynard Keynes in the final paragraph of *The General Theory*.

**J**UST as a deceptively simple trophy once breached the walls of Troy, some three millennia later the deceptively simple beliefs of an apparently trivial minority brought down the Berlin Wall. Less spectacularly, in almost every country on almost every issue, these beliefs radically changed the way we are governed. In Australia, productivity nearly doubled in the 1990s and we survived the Asian crisis with barely a hiccup.

Dries, or as some say, economic rationalists are identified solely by the beliefs that they share, yet few attempts have been made to list their essential beliefs or to explain how they took the citadel.

For the first three-quarters of the twentieth century, philosophers and economists even of the standing of Adam Smith, Ludwig von Mises, Friedrich Hayek, Karl Popper and Milton Friedman had been portrayed as Canute-like figures admonishing the inevitable. The publications of the fledgling think-tanks of the 1960s and 1970s were dismissed as amusing intellectual games. The arguments of Bert Kelly, the Member for Wakefield in the Federal Parliament, were dismissed as quaint but irrelevant. Classical liberals every-

where were portrayed as barbarians, successfully starved of academic recognition and derided or ignored as suited their opponents. In the last quarter of the century, ideas of long-standing, that can in part be traced back to the Levellers in the 1640s for instance, took root and flourished among men and women of political action, right down to individual voters. How these ideas were sown and nurtured by a minuscule band of mostly happy warriors is a tale well worth the telling.

Dryism's roots reach deeply into beliefs about the nature of humanity, especially the Lockian notion that rights originate with the individual and that the function of authority is to protect the rights and liberties of citizens. A more arid philosophy could not have sustained the campaign. The powers of Crown, Parliaments and Courts are, therefore, held only in trust. The terms of this trust are the common ones that the entrusted powers will be exercised only on behalf of the intended beneficiaries and the beneficiaries are of one class—privilege is abhorrent. Nevertheless, dryism does not depend upon a metaphysical construct of society itself. Rather, society is what free and equal people make it, rather than some 'form'