

National Competition Policy Review of Radiation Protection Legislation

Implementation Plan

June 2002

Table of Contents

Table of Contents	2
Introduction	3
Summary of Projects	8
NCP-1- Legislative Amendments	9
NCP-2: Fractionation.....	11
NCP-3: Regulatory Styles	12
NCP-4: Third Party Certification.....	15
NCP 5: Periodic Reviews	17
NCP-6: National Uniformity	18
NCP-7: Occupational Licensing.....	20
NCP-8: Regional Communities	23
NCP-9: Advertising Restrictions	24
NCP-10: Trans-boundary Issues	25
NCP-11: Cost Recovery	27
NCP-12: National Incident Register	28
References	29
Acronyms.....	30

Introduction

National Competition Policy

In April 1995 all Australian governments agreed on a National Competition Policy (NCP). Under this agreement, the Commonwealth, States and Territories had to review their legislation¹ to ensure legislation did not restrict competition unless it could be shown that:²

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

The initial deadline for the completion of the NCP legislation review of all Commonwealth, State and Territory legislation was 31 December 2000. However, on 3 November 2000, the Council of Australian Governments (COAG) accepted the National Competition Council's (NCC) recommendation to extend the deadline to 30 June 2002. According to the COAG, all jurisdictions must complete their legislation reviews and implement appropriate reforms by 30 June 2002. Satisfactory implementation of reforms may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.

NCP review of radiation protection legislation

In December 1998, COAG Senior Officials Group agreed to the conduct of a joint national NCP review of radiation protection legislation³. It was decided that the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) would coordinate the review.

One of ARPANSA's aims is to promote national uniformity in radiation protection and nuclear safety policy and practices. To this end it formed the National Uniformity Implementation Panel (Radiation Control) [NUIP(RC)] in August 1998 as a working group of its Radiation Health Committee (RHC). The NUIP (RC) comprises senior officers from the Commonwealth, States and Territories' radiation protection agencies. It was the Steering Committee⁴ for the NCP review.

The review commenced on 8 August 2000. An Issues Paper was released for public comment from 16 October 2000 to 15 December 2000. Following receipt of all submissions, the Review Team undertook the analysis and produced a Draft Final Report on 28 February 2001. The Draft Final Report was released for public comment from 1 March to 31 March 2001. A series of focussed consultation meetings were held in all participating jurisdictions except the Northern Territory, which felt that it did not require a meeting as other jurisdictions would adequately address the issues. The meetings were attended by a total of 88 persons comprising respondents to the Issues Paper, stakeholders invited by the jurisdictions, members of radiation advisory committees/councils and officers from radiation safety agencies.

¹ The word "legislation" is explained broadly in clause 5(1) of the *Competition Principles Agreement* of 11 April 1995 as "including Acts, enactments, Ordinances or regulations".

² *Competition Principles Agreement*, clause 5(1)(a) and 5(1)(b)

³ Queensland did not participate in this review as it had already completed a public benefits test for its radiation safety legislation in 1999 and was in the process of implementing its outcomes.

⁴ The Steering Committee excluded the Queensland member.

Summary of findings

Thirty written submissions were received on the Issues Paper. The Draft Final Report attracted 20 written submissions and several comments at the focussed consultation meetings. Almost all stakeholders supported moves for greater national uniformity. In this respect, the Review Team noted that the Australian Health Ministers' Conference (AHMC) had, in August 1999, approved the development of a National Directory for Radiation Protection to provide an overall agreed national framework for radiation safety.

Although the lack of national uniformity had impacted administrative efficiency, it had not risked public health and safety. Thus the Review Team found that the gradualist approach to achieve national uniformity through the National Directory for Radiation Protection was an adequate response.

The Review Team concluded that there was a need to regulate radiation protection activities. This was based on radiation risk levels and market failure problems against the agreed objective to protect people and the environment from the harmful effects of ionising and non-ionising radiation. Under current radiation safety practices in Australia the risk of occurrence of a radiation risk causing event is unlikely. However such an event can have significant consequences. As such, the Review Team concluded that there was a need to maintain strict control measures to prevent such an event.

The Review Team found that there was a need to address information asymmetry problems as consumer information on radiation hazards is very scientific and technical in nature. It was also found that the unregulated use of radiation equipment, apparatus and sources could lead to externalities, the social costs of which would be a burden on the community.

The combination of radiation risk and market failure problems led to the conclusion that there was a need to retain the legislation and regulations under review and their generally prescriptive approach. Alternatives such as "negative licensing" or "self regulation" were found to be neither desirable nor feasible.

Nevertheless, the Review Team recommended the use of performance-based regulations where appropriate and better application of risk management principles to improve the efficiency of the legislation. A nationally agreed approach was recommended to outsource some regulatory functions to third party service providers. The Review Team also found that there must be a legislative requirement for periodic review of radiation protection legislation.

All restrictions in the legislation and regulations under review were classified as major or minor and assessed whether they were of net public benefit. Almost all restrictions, including licensing and registration provisions, were found to be of net public benefit. The only restriction recommended for removal was on advertising and promotional activities and this applied only to Western Australia (WA). The need to license dentists to use X-ray equipment was recommended for review.

On the issue of compliance costs, the Review Team recommended full cost recovery by agencies for their regulatory oversight functions, except for the provision of services of a public good nature. Also recommended was the development of a nationally agreed system to apply mutual recognition principles to the grant of licences and registrations to inter-State/Territory applicants.

The list of recommendations in the Final Report were as follows:

Objectives of the legislation

- (1) Jurisdictions are to amend the objectives statement of their legislation to “the protection of public health and safety and the environment from the harmful effects of ionising and non-ionising radiation”.
- (2) Jurisdictions are to identify duplication and discrepancies between radiation protection legislation and other related legislation, standards or codes of practice and take action to minimise the duplication and discrepancies consistent with national uniformity policies.
- (3) Jurisdictions are to include nationally consistent provisions in radiation protection legislation to protect the public from the harmful effects of non-ionising radiation.

Is there a need to regulate?

- (4) Jurisdictions are to retain the regulatory approach to achieve radiation protection objectives.

Alternative regulatory approaches

- (5) Jurisdictions are to consider using performance-based approaches where appropriate (that is, description of outcomes rather than the prescription of required action) based on risk management principles and all applicable quality and process standards. This is to be done in a nationally uniform manner within the framework of the National Directory for Radiation Protection.
- (6) Jurisdictions are to incorporate risk management principles in the National Directory for Radiation Protection.
- (7) Jurisdictions are to develop a uniform set of protocols on functions that can be outsourced to third-party service providers and establish national accreditation processes and guidelines for such providers. This could be done as part of the National Directory for Radiation Protection.
- (8) Jurisdictions are to legislate to review their radiation protection legislation at intervals of no more than 10 years.

National uniformity

- (9) Jurisdictions are to participate fully and unconditionally in the formulation and implementation of the National Directory for Radiation Protection and conduct a review of its effectiveness and efficiency within three years of its commencement.
- (10) The National Directory for Radiation Protection should take account of all existing standards, including those produced by ARPANSA, the National Health and Medical Research Council, the National Occupational Health & Safety Commission and Standards Australia.
- (11) Standards and codes of practice that will be adopted in the National Directory for Radiation Protection are to be, as far as practicable, consistent with relevant recommendations of international organisations and international standards.

Licensing and registration

- (12) The current systems of licensing and registration of operators, radiation equipment and radioactive substances are to be retained.
- (13) Jurisdictions are to review the need to license dentists as part of the development of the National Directory for Radiation Protection.

Strict and prescriptive standards

- (14) Jurisdictions are to retain the prescriptive approach in their legislation.
- (15) Jurisdictions are to take into account the needs of rural, remote and Aboriginal and Torres Strait Islander communities when formulating radiation protection policies.

Advertising and promotional activities

- (16) Jurisdictions are to remove any provision that restricts any licensee, holder of an exemption or registration from referring to that fact in any advertising or promotional material.

Compliance costs and cost recovery issues

- (17) Jurisdictions are to incorporate an administrative protocol in the National Directory for Radiation Protection for the application of mutual recognition principles to the grant of licences and registrations to inter-State/Territory applicants.
- (18) Jurisdictions should recover the cost of their regulatory oversight from licensing and registration fees except for activities of the regulatory authorities that are of a public good nature.
- (19) Jurisdictions should agree on a nationally uniform system of classification for radiation incidents, accidents or emergencies and develop a cost-effective national system to collect and collate information and publish a national register for radiation incidents.

AHMAC and AHMC submissions - 2001

The Final Report of the NCP Review was tabled at the Australian Health Ministers' Advisory Council (AHMAC) meeting on 31 May 2001. AHMAC noted the Final Report and agreed to forward the report to the Australian Health Ministers' Conference (AHMC). On 1 August 2001, the AHMC noted the report and asked ARPANSA to coordinate jurisdictions' responses to the recommendations and submit a national position on the recommendations.

Jurisdictions' Responses

Following the AHMC meeting, the CEO of ARPANSA wrote to all departmental heads and invited a formal response to the recommendations of the NCP Review. The deadline for submission of responses was 14 September 2001. Eventually all responses were received by mid-November 2001.

ARPANSA collated the responses and suggested to jurisdictions that three recommendations, namely Recommendations 1, 3 and 14 could be re-worded. The changes were to clarify rather than change the intent of the original recommendations.

Recommendations 1 and 3 were amended so that references to "public" were changed to "people" to ensure that radiation protection legislation covered occupational health and safety as well. In addition, Recommendation 1 was re-written from a prescriptive to a performance-based statement.

The original wording of Recommendation 14 (to retain current prescriptive approach) caused some confusion as it seemed to conflict with Recommendation 5 (which endorsed the use of performance-based approaches where appropriate). As such, Recommendation 14 was re-written to clarify that while jurisdictions are to retain the *current* prescriptive approach they ought to move towards a more performance-base approach as required under Recommendation 5.

The revised wording was accepted by all jurisdictions. The affected recommendations now read as follows:

Recommendation 1

Jurisdictions are to ensure that the objectives of their radiation protection legislation include the goal of protecting the health and safety of people and the environment from the harmful effects of ionising and non-ionising radiation.

Recommendation 3

Jurisdictions are to include nationally consistent provisions in radiation protection legislation to protect people from the harmful effects of non-ionising radiation.

Recommendation 14

Jurisdictions are to retain the current prescriptive approach in their legislation, while making efforts to move towards a performance-based approach as required under Recommendation 5.

This Implementation Plan

A total of 12 projects have been identified to implement the recommendations of the NCP review. The rest of this report contains more detail on:

- the background to each project;
- the recommendation/s that each project supports;
- the planned outcome/s and outputs;
- the name of the project manager;
- commencement date and deadlines.

The table in the next chapter provides a summary of all the projects.

Summary of Projects⁵

Project ID	REC⁶	Problems and issues	Planned outcomes
NCP-1: Legislative Amendments	1, 3	Not all jurisdictions' legislation contain objectives. Existing objectives vary in scope and clarity. No national consistency in legislative provisions to enable the control of non-ionising radiation.	Nationally consistent statements of radiation protection objectives and legislative coverage of non-ionising radiation.
NCP-2: Fractionation	2	Duplication and discrepancies among radiation protection legislation and provisions in industry specific legislation (eg. mining and transport).	Consistency in radiation safety principles, practices and standards among relevant regulations in various industry sectors.
NCP-3: Regulatory Styles	5, 6	COAG requires performance-based approaches where appropriate but radiation protection regulation/standards is now mainly prescriptive.	Lower costs to industry and regulators through outcome-based regulations and standards where appropriate.
NCP-4: Third- party Certification	7	There is no nationally consistent approach to third party certification systems. Some jurisdictions do not outsource any of their regulatory functions.	Lower costs to industry and regulatory agencies though more competition in providing testing and certification services.
NCP-5: Periodic Reviews	8	The need to ensure the periodic review of radiation protection legislation.	Improved regulatory effectiveness through periodic reviews of radiation protection legislation
NCP-6: National Uniformity	9, 10, 11	The National Directory must be completed on time and take into account all domestic and international standards, codes of practice and recommendations.	Timely completion and implementation of the National Directory.
NCP-7: Occupational Licensing	13	The NCP review highlighted the need to consider the needs of specific occupational groups. A national review could be done at the same time.	Efficient and effective occupational licensing systems that impose minimal compliance costs.
NCP-8: Regional Communities	15	Lack of national principles to ensure radiation safety policies address the needs of rural, remote, and Aboriginal and Torres Strait Islander communities.	Improved access to radiation services and safety information by rural, remote and Aboriginal and Torres Strait Islander communities.
NCP-9: Advertising Restrictions	16	WA restricts licensees and registration holders from advertising that fact. All jurisdictions should ensure that no such restriction exists.	Improved access by consumers to information on licensed/registered service providers.
NCP-10: Trans- boundary Issues	17	The overlap of Commonwealth and State/Territory jurisdictions is confusing. Also inter-State/Territory applicants have to demonstrate their fitness for a license or registration in every jurisdiction.	Lower compliance costs to industry through the application of mutual recognition policies.
NCP-11: Cost Recovery	18	The need to optimise cost-recovery from licence and registration fees and the provision of public goods and services.	Improved systems for efficient cost-recovery and effective provision of public goods.
NCP-12: National Incident Register	19	Efforts to compile a national incidents register have been stalled by inconsistent definitions among jurisdictions.	An effective and efficient system to develop and maintain a national incident register.

⁵ Note that Recommendations 4, 12 and 14 do not require further action.

⁶ NCP review recommendations.

NCP-1- Legislative Amendments

Background and Issues

Objectives of the legislation

The NCP review found that there was much concern over the lack of national uniformity in the manner in which the objectives of the legislation under review were stated. In some cases, objectives were not explicitly stated in the legislation and had to be discerned from other documents. Stakeholders expressed support for a uniform statement of objectives in all the jurisdictions' legislation

The Review Team concluded that there is a need for objectives to be written in each enabling Act in a straightforward, simple and broad manner. This is important, as the effectiveness of all other provisions in the legislation and the feasibility of policy options for radiation safety administration will be judged against the objectives.

Provisions for the control of non-ionising radiation

The NCP review noted the marked absence of a systematic approach to the regulation of non-ionising radiation. At present, of the jurisdictions that participated in the NCP review, only the Commonwealth, WA and Tasmania regulate the use or dealing with non-ionising radiation apparatus or equipment. All other States, and the NT have the power to regulate non-ionising radiation but do not do so. The ACT cannot regulate non-ionising radiation, as non-ionising radiation is not defined in its Act.

The use of electronic equipment that emits non-ionising radiation has grown dramatically in the last few years. Examples are the increasing use of lasers and radiofrequency devices, eg mobile telephones. The harmful effects from exposure to high levels of non-ionising radiation are known and well documented, but the evidence related to the effects of chronic low level exposure to electromagnetic fields (eg mobile telephones) in general is yet to be conclusively identified and documented.

The Review Team found that there is a need for a nationally uniform approach to the control of non-ionising radiation, especially the use of lasers and some radiofrequency devices. Unless all jurisdictions had provisions in their legislation that enabled them to reference standards and codes of practice on non-ionising radiation, any effort to deal with the harmful effects of non-ionising radiation may be thwarted by a lack of legislative underpinning.

Supported Recommendations

Recommendation 1: “Jurisdictions are to ensure that the objectives of their radiation protection legislation include the goal of protecting the health and safety of people and the environment from the harmful effects of ionising and non-ionising radiation”.

Recommendation 3: “Jurisdictions are to include nationally consistent provisions in radiation protection legislation to protect people from the harmful effects of non-ionising radiation”.

Planned outcomes

Nationally consistent statements of radiation protection objectives and legislative coverage of non-ionising radiation.

NCP-1- Legislative Amendments

Outputs

Report from each jurisdiction that the objectives of its radiation protection legislation include the goal of protecting the health and safety of people and the environment from the harmful effects of ionising and non-ionising radiation

Report from each jurisdiction that appropriate provisions are in place in its radiation protection legislation that enables effective and efficient control of non-ionising radiation.

Project Manager

This project will be undertaken by individual jurisdictions.

- (Note: Queensland is not obliged to participate in this project as it did not participate in the joint NCP review.)

Schedule

Start Date: 1 August 2002

Deadline: 30 June 2004

NCP-2: Fractionation

Background and issues

Radiation safety principles and standards are not consistently applied across the legislation and quasi-legislation in various sectors, for example, mines, OH&S and transport. Public consultation during the NCP review revealed discrepancies between radiation protection legislation and other related legislation and standards. Some of these discrepancies do not relate to legislation but to voluntary standards such as those produced by Standards Australia or the National Health and Medical Research Council. The NCP review found that the current situation is confusing and, unless clarified, there may be lingering doubts if radiation protection legislation operates exclusively or is complementary to other legislation.

Supported Recommendation

Recommendation 2: “Jurisdictions are to identify duplication and discrepancies between radiation protection legislation and other related legislation, standards or codes of practice and take action to minimise the duplication and discrepancies consistent with national uniformity policies”.

Planned outcome

Consistency in radiation safety principles, practices and standards among relevant regulations in various industry sectors.

Outputs

Report from each jurisdiction defining the scope and extent of the problem.

Options to solve the problem in a nationally consistent manner.

Agreement among regulators within each jurisdiction on a common set of radiation safety principles, practices and standards, including common principles for licensing and registration issues.

Project Manager

Dr Brad Cassels, Manager Radiation Safety Unit, Department of Human Services, Victoria.

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland’s participation in national uniformity projects flows from its membership of ARPANSA’s RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 31 December 2003

NCP-3: Regulatory Styles

Background and issues

Performance-based regulation is the opposite of the prescriptive or command and control type regulations. Instead of prescribing both the objectives and the rules, regulations would only specify the desired outcomes and an applicant for a licence or registration will need to demonstrate the effectiveness of the applicant's approach to achieve those objectives.

Performance-based approaches may provide greater flexibility and encourage innovation. Government agencies may spend fewer resources to write and update detailed rules. The over-generalisation of risks sometimes found in prescriptive regulations aimed to capture a wide range of situations and activities may be avoided. However, performance-based approaches involve risk management by the industry. This can add costs to small businesses, which usually have limited resources to address flexible approaches or to conduct detailed risk analysis. This may lead to decisions based on inadequate analysis or information.

For larger organisations such as major industrial users, national laboratories, teaching hospitals etc., which support their own radiation protection infrastructure, there is more room to manoeuvre and it could be argued that those who "own" the risk should "own" the responsibility to define the processes to achieve the performance outcomes. However, it could also be argued that performance-based approaches may be inappropriate for the activities of even large firms or corporations, which can afford to conduct their own risk assessment and management, if their activities require high levels of safety and may cause externalities that can adversely affect public health and safety.

In some cases, monitoring costs for government agencies may be higher than monitoring and enforcement systems employed in a prescriptive approach. This could be due to the lack of established standards or disagreements on whether the compliance model demonstrated by an industry participant is sufficient to achieve the outcomes specified in the legislation.

There is still a general reluctance in Australia to accept performance-based approaches in the area of radiation protection. This is well illustrated by the submissions made to the NCP Review Team. The general view was that businesses are profit motivated and would select low cost control systems and compromise safety standards. This is of particular concern in radiation safety, as the effects of exposure to ionising radiation cannot necessarily be traced to a particular source and has a long latency period of 10 to 15 years. Respondents felt that defining acceptable levels of exposure and putting in place legislation to ensure that such levels are not exceeded might be a safer approach.

However, the COAG calls on regulators to move away from overly prescriptive standards towards performance-based standards⁷. According to COAG, regulations could reference standards or a number of standards and there should be no restriction on the use of other standards as long as objectives of the legislation are met. Nevertheless, COAG also cautions regulators that prescriptive requirements may be needed to ensure public health and safety in high-risk activities.

It is evident that any shift to performance-based approaches to achieve radiation protection objectives has to be approached very cautiously. Even if a performance-based approach is to

⁷ *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards-Setting Bodies*, Council of Australian Governments, November 1997.

be adopted for particular activities in radiation safety administration, this has to be gradual and only after a thorough analysis to determine which activities may be regulated through an outcome-based approach.

Where performance-based approaches are to be adopted, the implementation has to be accompanied by substantial efforts to educate the industry on risk analysis and management. A well-defined transition plan may be required to overcome the resistance to performance-based approaches. The transition to a performance-based approach could be aided by using a “dual track” method with either “safe harbour” or “waiver/variance” provisions in regulations⁸.

“Safe harbour” provisions in performance-based regulations enable persons or businesses that do not have the resources to comply with the outcomes-based approach to elect to use certain rules or standards prescribed or referenced in the regulations. This enables those that prefer to comply with prescribed rules to have the option to do so while others use the performance-based approach. Alternatively, regulations can continue to be prescriptive but may contain provisions that empower agencies to grant waivers or variances on a case-by-case basis to firms that demonstrate compliance through alternative means.

It is also possible for performance-based approaches to be mitigated in some circumstances by imposing prescriptive conditions in licences for the conduct of activities for which the applicant has not sufficiently demonstrated an ability to deal with all the risks of the activities that are to be licensed.

The Review Team concluded that the analysis of which activities may be suitable for regulation by outcomes-based approaches may be done in a nationally uniform manner within the framework of the National Directory for Radiation Protection.

A related issue is the question of risk management. The NCP review considered a paper released by the Legislation Reform Working Group (LRWG) of the National Public Health Partnership (NPHP).⁹ The paper made certain recommendations on how public health legislation can be written to ensure that risk management is undertaken. Many of the recommended approaches are already present in existing radiation protection legislation. These include, licensing provisions, obligations to report mishaps, powers to inspect premises, powers to conduct inquiries, the use of standards and codes of practice and the defence of due diligence. The NPHP paper recommends that risk management principles should be entrenched in public health legislation to ensure that the regulators and the regulated are compelled to analyse risks and hazards from policy formulation through to legislative action. The NCP review concluded there was scope for radiation protection legislation to be improved through the application of risk management principles.

Supported Recommendations

Recommendation 5: “Jurisdictions are to consider using performance-based approaches where appropriate (that is, description of outcomes rather than the prescription of required action) based on risk management principles and all applicable quality and process standards”.

Recommendation 6: “Jurisdictions are to incorporate risk management principles in the National Directory for Radiation Protection”.

⁸ See *Improving the Cost Effectiveness of Government: Alternatives to Command and Control Regulation*, by Brian Mannix, OECD, May 1994 (as reproduced in *From Red Tape to Results*, NSW Cabinet Office, February 1995).

⁹ *The Application of Risk Management Principles in Public Health Legislation*, Legislation Reform Working Group, National Public Health Partnership, June 2000.

Planned outcome

Lower costs to industry and regulators through outcome-based regulations and standards where appropriate.

Outputs

List of risks that can be treated more efficiently with an outcome-based approach.

List of principles for regulatory authorities to apply in reviewing their legislation to move towards an outcomes-based approach.

Generic risk management principles for the industry.

Action to incorporate outputs into the National Directory for Radiation Protection.

Project Manager

Consultant to be appointed by the NUIP (RC).

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland's participation in national uniformity projects flows from its membership of ARPANSA's RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 30 June 2003

NCP-4: Third Party Certification

Background and issues

Third party certification is a useful device for authorities to divest themselves of certain regulatory functions and to foster competition among firms that wish to provide accredited services. Using third party certification to outsource some regulatory functions enables cost-savings for governments and creates opportunities for firms and persons to provide accredited services in a competitive environment.

However, costs to users could increase as any existing government subsidy may be removed. Outsourcing may also require expenditure to enact standards to ensure that accreditation and certification processes and outcomes are objective and reliable. It is also impossible for radiation safety agencies to outsource all their regulatory functions as a certain level of control over licensees and registration holders is desirable in the interest of public health and safety. Care must also be taken to ensure that there is no misuse of processes by unscrupulous service providers or industry.

Third-party certification is already in use in some jurisdictions for the testing and certification of certain equipment and apparatus. However, there is no nationally consistent approach to issues such as which activities can be outsourced and the licensing or accreditation of third-party service providers.

The Nuclear Energy Agency (NEA) of the Organisation for Economic Cooperation and Development (OECD) said in a report¹⁰ last year, that third-party certification could benefit regulatory effectiveness and efficiency but its cost-effectiveness and the merits of involving outsiders in regulatory affairs must be thoroughly assessed. The report recommended that formal accreditation should only be pursued if the regulatory authority is convinced that it will bring some extra benefits. The report also noted that third-party certification may be of benefit only if quality standards can be readily established.

The NCP review concluded that jurisdictions should consider outsourcing some activities to accredited third-party service providers to provide the industry a choice of service providers. The increased competition could ultimately benefit consumers through lower prices.

However, there is a need to ensure that certification services are performed against well-defined standards and only qualified and capable service providers are accredited or licensed. As the development of radiation protection standards under the National Directory for Radiation Protection will be a national effort, there is merit in adopting a nationally coordinated approach to ascertain what activities can be outsourced to third-party providers and how service providers will be licensed or accredited.

Supported Recommendation

Recommendation 7: “Jurisdictions are to develop a uniform set of protocols on functions that can be outsourced to third-party service providers and establish national accreditation processes and guidelines for such providers.” The recommendation included an observation that this could be done as part of the National Directory for Radiation Protection.

¹⁰ *Improving Regulatory Effectiveness*, Committee on Nuclear Regulatory Activities, Nuclear Energy Agency, OECD, January 2001, p.24.

NCP-4: Third Party Certification

Planned outcome

Lower costs to industry and regulatory agencies through more competition in providing testing and certification services.

Outputs

Reports from jurisdiction on the status of outsourcing activities in each jurisdiction.

National agreement on activities that can be outsourced.

National agreement on accreditation standards and processes.

Action to incorporate outputs into the National Directory for Radiation Protection.

Project Manager

Consultant to be appointed by the NUIP (RC).

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland's participation in national uniformity projects flows from its membership of ARPANSA's RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 30 June 2003

NCP 5: Periodic Reviews

Background and issues

A common method to ensure that regulation remains current and up-to-date is by “sunset clauses” that require legislation to have a fixed expiry date. This forces agencies to periodically re-visit their legislation. However, the consequences of not reviewing legislation before the expiry date are serious. Unless “renewed” on the expiry date, legislation would lose its force.

Some respondents to the Draft Final Report of the NCP review suggested that instead of inserting a sunset clause it would be better to commit jurisdictions to a periodic review of their legislation. This would ensure that jurisdictions review their legislation periodically without running the risk of letting their legislation lapse.

The Review Team accepted this suggestion noting that under the Competition Principles Agreement, jurisdictions are required to conduct competition policy reviews of their legislation once every ten years.

Supported Recommendation

Recommendation 8: “Jurisdictions are to legislate to review their radiation protection legislation at intervals of no more than 10 years”.

Planned outcome

Improved regulatory effectiveness through periodic reviews of radiation protection legislation.

Output

Reports from each jurisdiction that a regime is in place for the review of radiation protection legislation at intervals of no more than 10 years.

Project Manager

This project will be carried out by individual jurisdictions.

- (Note: Queensland is not obliged to participate in this project as it did not participate in the joint NCP review.)

Schedule

Start Date: 1 August 2002

Deadline: 31 July 2003

NCP-6: National Uniformity

Background and issues

Under Section 15(1)(a) of the Australian Radiation Protection and Nuclear Safety Act 1998, the CEO of ARPANSA is responsible for the promotion of uniformity of radiation protection and nuclear safety policy and practices across the Commonwealth, States and Territories. The Radiation Health Committee (RHC), which was established under Section 22 of the Act, shall, on the request of the CEO of ARPANSA, develop policies and publications for the promotion of uniform national standards of radiation protection, formulate codes and standards and periodically review national radiation protection policies, codes and standards to ensure they continue to reflect world best practice. To this end, the RHC formed the NUIP (RC) as its working group on national uniformity issues.

In August 1999, the AHMC approved a proposal by the NUIP (RC) to achieve national uniformity in radiation protection through the promulgation of a “National Directory for Radiation Protection”.

The National Directory option was selected because although the lack of national uniformity created administrative inefficiencies it did not adversely affect the health or safety of people or the environment. In addition, two jurisdictions were reluctant to immediately adopt a higher degree of national uniformity through template or mirror legislation.

The National Directory will contain mandatory and guidance provisions on radiation protection and radiation safety management for adoption by the Commonwealth, States and Territories. These provisions would be written into the National Directory following extensive consultation and agreement by jurisdictions. Such provisions could include national radiation protection standards, codes of practice and ‘model’ licence conditions.

Jurisdictions would use the provisions in the National Directory when undertaking amendments to their Acts, regulations and policies. If the provisions are carefully drafted it might also be possible to lift entire sections directly into legislation with minimum additional drafting effort. In time, it would be easy to use the National Directory for “template” or “mirror” legislation, if a higher degree of national uniformity is desired.

The development of the National Directory is underway and standards and codes of practice (both existing and proposed) are being reviewed or developed and released in stages for public consultation as part of the Regulatory Impact Assessment processes. The revised and new standards and codes will be re-named as the “Radiation Protection Series” to distinguish them from the National Health and Medical Research Council’s “Radiation Health Series”, which will be superseded in stages.

The National Directory is meant to be a dynamic document with changes being made to accommodate new issues as they arise. A major advantage of the National Directory is that standards and codes of practice can be documented and amended with relative ease compared with the preparation or amendment of legislation.

Supported Recommendations

Recommendation 9: “Jurisdictions are to participate fully and unconditionally in the formulation and implementation of the National Directory for Radiation Protection and conduct a review of its effectiveness and efficiency within three years of its commencement.”

NCP-6: National Uniformity

Recommendation 10: “The National Directory for Radiation Protection should take account of all existing standards, including those produced by ARPANSA, the National Health and Medical Research Council, the National Occupational Health & Safety Commission and Standards Australia.”

Recommendation 11: “Standards and codes of practice that will be adopted in the National Directory for Radiation Protection are to be, as far as practicable, consistent with relevant recommendations of international organisations and international standards.”

Planned Outcome

Timely completion and implementation of the National Directory.

Outputs

Version 1.0 of the National Directory, including, a Regulatory Impact Statement approved by the Office of Regulation Review (ORR).

List of all existing standards, codes of practice and recommendations (domestic and international) to be taken into account.

List of all proposed standards and codes of practice planned for incorporation into the National Directory and a schedule for their incorporation.

A webpage for the National Directory in the ARPANSA website.

Project Manager

Mr Alan Melbourne, Manager Standards Development and Committee Support Section, ARPANSA.

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland’s participation in national uniformity projects flows from its membership of ARPANSA’s RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: Currently ongoing.

Deadline: 31 December 2002

NCP-7: Occupational Licensing

Background and issues

Although the NCP Review found (see Recommendation 12) that the “current systems of licensing and registration of operators, radiation equipment and radioactive substances are to be retained”, this section of the NCP review report (see Section 5 of the Final Report) also made some observations and other recommendations that require further review. These were discussed in the NCP review report under the following headings:

- National uniformity in licensing and registration requirements (this is covered under NCP-10 below)
- “Use vs. Responsibility”
- Dentists
- Nuclear medicine professionals and radiographers

“Use vs. Responsibility”

It was not entirely clear from some of the legislation under review if a licence for a company or individual to sell radioactive substances or radiation equipment would be sufficient to cover individual salespersons employed by the licensee or whether individual licences would be required for each salesperson.

The problem also arises in cases where a university department is located within a hospital. The question that arises is whether it is the university or its department that ought to be licensed or the hospital. The problem gets more complicated when the university is a Commonwealth entity and the hospital is a State/Territory entity.

The NCP Review Team did not make a specific recommendation in this regard as it was advised that these issues have already been planned for action in the National Directory for Radiation Protection.

Dentists

The Australian Dental Association (ADA) submitted to the NCP review that there is no need to licence dentists to perform dental radiography or require dentists to register their X-ray equipment. The ADA argued that routine exposure to dental radiography does not give rise to exposure levels of significant risk.

On the question of registering dental X-ray equipment, it must be noted that information in some annual reports of the authorities showed that registrations of dental X-ray machines had been revoked in the past due to poor service and maintenance of the equipment.

One submission to the Draft Final Report pointed out that the deregulation of dental radiography equipment may mean that regular inspections could not take place, there would be no control over the siting of equipment and untested equipment could be imported into Australia without control over safety and quality. There would also be no control over the testing for the safe performance of the equipment and over ageing and outdated equipment that no longer meet safety standards.

The NCP review concluded that registration of dental X-ray machines must be retained to enable authorities to ensure that only equipment that meet safety standards are registered and these equipment are being properly serviced and maintained.

NCP-7: Occupational Licensing

However, the issue of whether dentists required to be licensed was controversial. A proposal in the Draft Final Report of the NCP review that a review should be undertaken to assess if there is a case to remove the requirement for dentists to be licensed to operate dental X-ray equipment drew very strong objections for the following reasons:

- It would create inconsistencies when compared to requirements in some jurisdictions for dental therapists and dental nurses.
- Licensing is required as a gateway through which only those who demonstrate appropriate qualifications can gain entry.
- Dental radiography is a complex area and there are formal courses in dental X-ray techniques in some jurisdictions.
- A significant number of dental radiography examinations are carried out on children and adolescents and as such there is a need for control and monitoring.
- Repeated imaging of oral structures could, if not shielded properly, potentially harm radiosensitive organs in nearby regions, such as the lens of eyes and thyroid glands.

The NCP review noted that not all jurisdictions license dentists to operate dental X-ray equipment and that this issue would require further consideration in the course of the preparation of the National Directory for Radiation Protection.

Nuclear medicine professionals and radiographers

The Australia and New Zealand Society of Nuclear Medicine (ANZSNM) Accreditation Board pointed out that some jurisdictions incorrectly treated a general qualification in medical imaging as sufficient for a person to undertake the duties of a Nuclear Medicine Technologist. The ANZSNM argued that legislation must recognise the differences in the medical imaging professions (Nuclear Medicine Technologist, Diagnostic Radiographer and Radiation Therapist) and the need for appropriate qualifications for each of these categories.

There are also disparities among jurisdictions in the way in which radiographers are currently licensed or registered (or not licensed or registered as the case may be). In some jurisdictions (Tasmania, Northern Territory and Victoria) radiographers are registered under other Acts that was not the subject of the NCP review. While there have been moves in WA to try and obtain registration for radiographers, the NT is in the process of removing the requirement for radiographers to be registered.

The Review Team noted that the question of the licensing or registration of radiographers would be addressed by the jurisdictions as part of the development of the National Directory for Radiation Protection. The NCP Review Team did not make a specific recommendation in this regard as it was advised that these issues have already been planned for action in the National Directory for Radiation Protection.

Supported Recommendation¹¹

Recommendation 13: “Jurisdictions are to review the need to license dentists as part of the development of the National Directory for Radiation Protection”.

Planned outcomes

Efficient and effective occupational licensing systems that impose minimal compliance costs.

¹¹ There was no recommendation in relation to the other two issues.

NCP-7: Occupational Licensing

Outputs

Report on the review of the need to licence dentists to operate dental X-ray equipment.

Written criteria for licence categories and occupational licensing/registration requirements.

Action to incorporate outputs into the National Directory For Radiation Protection.

Project Manager

Consultant to be appointed by the NUIP (RC).

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland's participation in national uniformity projects flows from its membership of ARPANSA's RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 31 December 2003

NCP-8: Regional Communities

Background and issues

In its submission to the NCP review Issues Paper, the Population Health Division (PHD) of the (then) Commonwealth Department of Health and Aged Care said provision should be made for effective communication with indigenous and other culturally diverse communities. This is to ensure that these communities understand the risks and are able to comply with directions for remedial action during an emergency or dangerous situation. The PHD stressed the need to provide accessible information to such communities.

The Review Team accepted the merit in making a recommendation that specifically addressed the needs of indigenous communities but decided to expand the scope of that recommendation to include also rural and remote communities and general policy issues rather than just information needs. This is because radiation safety in rural, remote and indigenous communities concerns wider issues than information needs and includes, for example, the question of the provision of radiography services by general practitioners.

Supported Recommendation

Recommendation 15: “Jurisdictions are to take into account the needs of rural, remote and Aboriginal and Torres Strait Islander communities when formulating radiation protection policies”.

Planned outcome

Improved access to radiation services and safety information by rural, remote and Aboriginal and Torres Strait Islander communities.

Outputs

Written principles on radiation health service delivery and radiation safety information access for rural, remote and Aboriginal and Torres Strait Islander communities.

Action to document the output into the National Directory for Radiation Protection.

Project Manager

Dr George Koperski, Senior Policy Officer, Radiation Health, Department of Health and Community Services, The Northern Territory

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland’s participation in national uniformity projects flows from its membership of ARPANSA’s RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 30 June 2003

NCP-9: Advertising Restrictions

Background and issues

Only one of the eight participating jurisdictions (WA) has a provision in its legislation that restricts advertising and promotional activities. The NCP review found that there is no justification to restrict the public from knowing that a person or organisation is fit to hold a licence or registration to use or deal with radiation equipment or radioactive substances.

Supported Recommendation

Recommendation 16: "Jurisdictions are to remove any provision that restricts any licensee, holder of an exemption or registration from referring to that fact in any advertising or promotional material".

Planned outcome

Improved access by consumers to information on licensed/registered service providers.

Outputs

Reports from each jurisdiction that any restriction in the jurisdiction's legislation on advertising and promotional activities has been removed.

Project Manager

This project will be undertaken by individual jurisdictions.

- **Note:** "Queensland is not obliged to participate in this project as it did not participate in the joint NCP review."

Schedule

Start Date: 1 August 2002

Deadline: 31 December 2002

NCP-10: Trans-boundary Issues

Background and issues

Section 5 of the NCP review Final Report discussed the lack of national uniformity in licensing and registration provisions and the granting of exemptions, with different requirements in different jurisdictions.

A related issue is the lack of clarity on whether a person needs to be licensed by both a State/Territory and the Commonwealth. This issue has arisen since the formation of ARPANSA in 1998. ARPANSA licenses Commonwealth entities and their contractors. However, a Commonwealth entity or contractor may perform an activity that physically impacts on a State or Territory, for example, radioactive waste disposal. The fact that the Commonwealth's jurisdiction is not limited by a physical boundary adds to the confusion.

The Commonwealth cannot ignore the fact that its licensees work within the physical jurisdiction of a State or Territory, which may also, in some cases, require a Commonwealth licensee to comply with State/Territory requirements. As the consequences of a breach of a safety requirement by a Commonwealth licensee could immediately impact on the State/Territory in which the activity is being performed, this has prompted State/Territories to be equally concerned about the activities of Commonwealth licensees.

Such issues also came up in the NCP review in the discussion on compliance costs of licensees and registration holders who have to pay for licences or registrations in every jurisdiction in which they may operate. The need to pay for a licence in every jurisdiction is unavoidable as the current agreed approach to national uniformity involves the maintenance of separate licensing and registration regimes in each jurisdiction.

Nevertheless, the NCP review found that at least part of the problem can be addressed if jurisdictions agreed to grant a licence or registration certificate to an inter-State/Territory applicant if the applicant is the holder of an existing valid licence or registration issued by a competent authority in another jurisdiction. This would ensure that licensees and registration holders need not demonstrate their fitness for a licence or registration certificate in every jurisdiction that they operate. This would save businesses costs involved in demonstrating their fitness for the licence or registration certificate in every jurisdiction.

Supported Recommendation

Recommendation 17: “Jurisdictions are to incorporate an administrative protocol in the National Directory for Radiation Protection for the application of mutual recognition principles to the grant of licences and registrations to inter-State/Territory applicants”.

Planned outcome

Lower compliance costs to industry through the application of mutual recognition policies.

Outputs

Written principles to guide users on licensing and registration requirements when Commonwealth and State/Territory jurisdictions overlap.

NCP-10: Trans-boundary Issues

A nationally agreed administrative protocol for the application of mutual recognition principles in licensing and registration activities.

Action to incorporate the outputs into the National Directory for Radiation Protection.

Project Manager

Mr Len Potapof, Manager Radiation Policy Unit, Environmental Protection Authority, New South Wales.

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland's participation in national uniformity projects flows from its membership of ARPANSA's RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: 1 August 2002

Deadline: 31 December 2002

NCP-11: Cost Recovery

Background and issues

Public submissions pointed to the fact that compliance costs were neither unnecessary nor excessive. One respondent pointed out that the safety issues involved outweigh the “relatively negligible costs” of registration and licensing. Another respondent submitted that compliance costs are not excessive and are not necessarily avoided in a non-regulatory climate where indirect costs will, in any case, have to be borne for prudential reasons. The NCP review found that compliance costs incurred to comply with the legislation are not significant and are necessary for the achievement of radiation protection objectives.

On the question of cost recovery there was, on balance, support for the “user pays” principle to ensure that authorities recover the costs of their regulatory oversight functions. However, the NCP review found that some activities of regulatory authorities, such as, public education, emergency action, research and development and maintenance of statutory committees and councils are public goods that authorities should continue to fund.

Supported Recommendation

Recommendation 18: “Jurisdictions should recover the cost of their regulatory oversight from licensing and registration fees except for activities of the regulatory authorities that are of a public good nature”.

Planned outcome

Improved systems for efficient cost-recovery and effective provision of public goods.

Outputs

Reports from jurisdictions that their cost recovery regime is in accordance with the objectives of Recommendation 18.

Project Manager

This project will be undertaken by individual jurisdictions.

- **Note:** "Queensland is not obliged to participate in this project as it did not participate in the joint NCP review."

Schedule

Start Date: 1 August 2002

Deadline: 31 July 2003

NCP-12: National Incident Register

Background and issues

The legislation in every jurisdiction imposes a duty on an employer, licensee or holder of a registration to report to the relevant authority any incident of excessive dose or exposure beyond the prescribed levels. The requirement to report incidents, accidents and emergencies is to ensure appropriate responses to such events. In addition, the reports and findings of any investigation can be used for radiation safety training and to evaluate the effectiveness of radiation protection legislation.

Efforts to compile a national register of radiation incidents commenced in 1971 but the task has been made difficult through inconsistent reporting from jurisdictions due to differing definitions among jurisdictions on what is a radiation “incident”, “accident” or “emergency”. Recently ARPANSA created a computerised database of incidents based on information reported by States and Territories. Efforts are underway to develop procedures for the compilation of a national register. This includes plans to develop common reporting forms with uniform criteria and definitions and a program to generate reports from the database to publish a periodic national register of radiation incidents.

Supported Recommendation

Recommendation 19: “Jurisdictions should agree on a nationally uniform system of classification for radiation incidents, accidents or emergencies and develop a cost-effective national system to collect and collate information and publish a national register for radiation incidents”.

Planned outcome

An effective and efficient system to develop and maintain a national incident register.

Outputs

National agreement on a uniform system of classification for radiation incidents, accidents or emergencies.

A system for the reporting of incidents and compilation of the national register.

Project Manager

Mr Alan Melbourne, Standards Development and Committee Support Section, ARPANSA.

- (Note: Although Queensland did not participate in the joint NCP review, it will participate in the implementation of this project as it relates to national uniformity or the National Directory for Radiation Protection. Queensland’s participation in national uniformity projects flows from its membership of ARPANSA’s RHC and the NUIP (RC). In August 1999 the AHMC approved the development of the National Directory for Radiation Protection as a pathway to achieve national uniformity in radiation protection standards, codes of practice and regulatory practices.)

Schedule

Start Date: Ongoing.

Deadline: 31 July 2003

References

Compendium of National Competition Policy Agreements, National Competition Council, (Second Edition 1998)

Improving Regulatory Effectiveness, Committee on Nuclear Regulatory Activities, Nuclear Energy Agency, OECD, January 2001, p.24.

Improving the Cost Effectiveness of Government: Alternatives to Command and Control Regulation, by Brian Mannix, OECD, May 1994 (as reproduced in *From Red Tape to Results*, NSW Cabinet Office, February 1995).

NCP Review of Radiation Protection Legislation, Draft Final Report, ARPANSA, February 2001.

NCP Review of Radiation Protection Legislation, Final Report, ARPANSA, May 2001

NCP Review of Radiation Protection Legislation, Issues Paper, ARPANSA, October 2000.

Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards-Setting Bodies, Council of Australian Governments, November 1997.

The Application of Risk Management Principles in Public Health Legislation, Legislation Reform Working Group, National Public Health Partnership. June 2000.

Acronyms

ACT	The Australian Capital Territory
ADA	Australian Dental Association
AHMAC	Australian Health Ministers' Advisory Council
AHMC	Australian Health Ministers' Conference
ANZSNM	Australia and New Zealand Society of Nuclear Medicine
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
COAG	Council of Australian Governments
LRWG	Legislation Reform Working Group
NCP	National Competition Policy
NEA	Nuclear Energy Agency of the OECD
NPHP	National Public Health Partnership
NUIP (RC)	National Uniformity Implementation Panel (Radiation Control)
OECD	Organisation for Economic Cooperation and Development
OH&S	occupational health and safety
PHD	Population Health Division of the Department of Health and Aged Care
RHC	Radiation Health Committee
WA	Western Australia