

OPTOMETRISTS REGISTRATION BOARD OF VICTORIA

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4 August 2003

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EVALUATION OF MUTUAL RECOGNITION SCHEMES

Thank you for the opportunity to read and respond to your draft research report.

A report was considered by the Optometrists Registration Board at its July meeting, a copy of that report with the Board's resolutions is attached for your consideration.

The question of provisional registration has since been clarified with the New Zealand Board and this interpretation removes at least that minor concern. We should ensure that all Australian jurisdictions use the same interpretation i.e. that a person, for TTMRA purposes, cannot be registered in an Australian jurisdiction on the basis of a provisional registration in New Zealand.

Since that Board meeting we are in the receipt of another application from Northern Ireland. This person provides their home address in Northern Ireland, indicates another address of a Melbourne optometrist's practice and has only recently obtained provisional registration in New Zealand.

It seems reasonable to infer that the applicant has no intention of practising in New Zealand, but is using TTMRA to gain quick access to Australia.

There should, if an exemption of optometry from TTMRA is not obtainable, be a minimum qualifying period in New Zealand of not less than two years before registration in an Australian jurisdiction under TTMRA. This would have the effect of it being more likely that candidates would go through the process of examination by The Optometry Council of Australia and New Zealand instead of using the back door.

Yours faithfully

CK BEAMISH
REGISTRAR
Enc.

4.13 Mutual Recognition

4.13.1 Evaluation of Mutual Recognition Schemes

A draft research report with an invitation to provide written comments has been received from the Productivity Commission. The report is about 280 pages long, so I haven't bothered to copy it or obtain extra copies for Board members.

Written comments should reach the Commission by the 8th August 2003.

It is expected that a relatively brief outline of the report will be provided either as an attachment or at the meeting with reference to those matters which most directly affect optometrists.

Supplementary Report

The Registrar distributed excerpts of the report as an attachment.

Agreed:

That Board members would consider the report and provide feedback, if any, to the Registrar by the end of the month.

SUPPLEMENTARY REPORT

4.13 MUTUAL RECOGNITION SCHEMES – PRODUCTIVITY COMMISSION EVALUATION

The Productivity Commission Evaluation Mutual Recognition Scheme Draft Research Report June 2003 has been received. Written comments are invited and should reach the Commission by 8 August 2003.

The contents pages are attached.

This report to the Board does no more than draw out some quotations which may be of more relevance for optometry.

OVERVIEW

“The Mutual Recognition Agreement (MRA) and the Tran-Tasman Mutual Recognition Arrangement (TTMRA) – apply to regulations affecting the sale of goods and the registration of occupations.”

Rationales & Effectiveness

“National and trans-Tasman standards”

“As the barriers to movement are reduced, there is a potential for the lowest occupational standard to become the dominant one. It was expected that competition amongst products and skills subject to differing regulatory requirements would be met by governments seeking to harmonise standards rather than contemplate a potential ‘race to the bottom’.”

“Standards have also been harmonised for some occupations, including trans-Tasman standards for nurses and Australian national registration for lawyers.”

“While it is not possible to attribute these developments solely to mutual recognition, mutual recognition also provides strong incentives to resolve differences in standards. Reaching common ground amongst jurisdictions to settle on a mutually-agreed standard can balance business interests and serve the public interest.”

“Mobility for registered occupations

While mutual recognition has reduced impediments to the mobility across jurisdictions for people in registered occupations, there are several problems in the day-to-day operation of the schemes.”

“Finding ways to address impediments encountered by professionals who wish to practise temporarily in another jurisdiction;

Concerns that the entry of professionals through the ‘easiest jurisdiction’ might lower the overall competency of an occupation in Australia and New Zealand and lead to the ‘lowest common denominator’ becoming the benchmark;”

“Discrepancies across jurisdictions in relation to requiring applicants to demonstrate current competency and/or ‘recency of practice’ in order to gain or maintain registration.”

“Monitoring and enforcement

While the TTMRA requires the participating parties to monitor the effectiveness of the arrangement and for Ministerial Councils to report on its effectiveness, it appears little has been done. Little information is collected on the operations of the TTMRA. Similarly, there are few mechanisms for enforcement of mutual recognition obligations and decisions. There seems to be inadequate accountability where jurisdictions do not fully meet mutual recognition obligations.”

“PRELIMINARY FINDINGS”

“Processes for applying mutual recognition obligations”

“PRELIMINARY FINDINGS 5.4

Information flows among registration boards across jurisdictions would be enhanced by a greater use of electronic database registration systems with a capacity for access by counter-party registration boards.

PRELIMINARY FINDINGS 5.5

There are likely to be net benefits from improving the capacity of registration systems to accommodate short notice applications for registration, to allow the short-term movement of professionals across jurisdictions.

PRELIMINARY FINDINGS 5.6

Australian occupational registration authorities should continue to consider developing national registration systems where the benefits justify the costs.

PRELIMINARY FINDINGS 5.7”

Jurisdictions in Australia and New Zealand continuing to work on reducing differences in relation to registration requirements, helps to address concerns (including costs incurred) of jurisdictional ‘shopping and hopping’.

“PRELIMINARY FINDINGS 5.9

The efficacy of professional standards and, therefore, confidence in the mutual recognition process, is being enhanced by the trend for jurisdictions to require some degree of ‘current competency’ as a requirement of registration.”

“The governance of mutual recognition”

“PRELIMINARY FINDINGS 6.3

There are grounds for examining options to streamline the temporary exemption process, especially in cases where there are pressing health, safety or environmental concerns.”

“Special exemptions under the TTMRA”

“PRELIMINARY FINDINGS 8.1

All TTMRA exemptions should be defined as narrowly as possible to limit the scope for new regulations inappropriately impeding economic integration.”

“PRELIMINARY FINDINGS 8.9

A report under the Therapeutic Goods Cooperation Program on the advantages and disadvantages of including complementary medicines within the special exemption for therapeutic goods should be submitted to COAG.”

“1. INTRODUCTION”**“2. MUTUAL RECOGNITION FRAMEWORK”****“3. RATIONALE AND ASSESSMENT CRITERIA”****“4. IMPACT OF THE ARRANGEMENTS” (*Refer Tables 4.3 & 4.4 in attachments*)**

“In percentage terms, the largest users of the TTMRA have been optometrists (40 per cent of all new registrations since 1998). In comparison, nurses registered under the TTMRA comprised only 12 per cent of new registrations in Australia.”

“Third country sourcing

A number of interested parties expressed concern that third-country trained professionals were making use of MRA and TTMRA provisions to enter jurisdictions through the ‘easiest’ route, thus subverting the qualification and experience requirements of their ultimate destination jurisdiction. Parties noted that such activity had the potential to lower standards and impose costs on jurisdictions, and queried whether this was intended under the mutual recognition legislation.

Unfortunately, data are not available to assess the extent to which third country sourcing effects were taking place. While DEST has collected information on registrants from New Zealand with New Zealand qualifications, the majority of registration boards were not able to provide information on the country of training of TTMRA registrants. The lack of comprehensive data prevents a valid comparison of the total number of TTMRA registrants with the number of registrants trained in other countries, entering Australia. Hence, these data can only indicate basic trends....”

“4.7 Conclusion”

“Stronger evidence exists for the positive effect mutual recognition has had on occupational mobility. The available data show that a significant number of individuals across the range of occupations have used the mutual recognition provisions. Numerous individuals report satisfaction with increased facilitation provided by both mutual recognition schemes in making registration of occupations portable across jurisdictions.”

“5. Processes for applying mutual recognition obligations”“Jurisdiction shopping

A number of interested parties expressed concern about jurisdiction shopping leading to ‘back door entry’ ie, individuals ‘shop around’ to find the jurisdiction with the easiest or cheapest requirements for registration, and then use the MRA and TTMRA to move to their preferred jurisdiction. This concern was often raised in discussions about the movement of third country trained professionals. In some cases, it appears that New Zealand accepts a wider range of qualifications in satisfying registration requirements than does Australia. This may occur for a variety of reasons, such as

historical arrangements or ties with a particular country, or shortages of a particular occupation leading to loosening of requirements. In other cases, particular Australian States may have lower standards for third-country trained professionals.

There is a concern that the entry of professionals through the 'easiest jurisdiction' might lower the overall competency of the occupation in Australia and New Zealand and lead to the 'lowest common denominator' becoming the benchmark. For example, the Optometrists Association of Australia noted that:

The New Zealand Government has altered the New Zealand Optometrists Registration Act to allow members of the British College of Optometrists to be registered in New Zealand without examination. This decision provides a back-door entry for UK registered optometrists who wish to practise in Australia but want to avoid a test of their competency to register in Australia. Optometrists with membership of the British College of Optometrists who want to practise in Australia register in New Zealand and then obtain registration in Australia by virtue of TTMRA.

...No optometric registration board, no head of optometry school, no professional association in any jurisdiction in Australia or New Zealand regards UK registration as suitable for automatic registration in Australia or New Zealand.

...The abuse of the arrangements has become widespread. New South Wales alone registered over 50 optometrists with New Zealand registration under Trans-Tasman Mutual Recognition in 1999. This number is greater than the number of graduates from the New South Wales school of optometry in that year. We understand that most of these optometrists are in fact from the UK and are registering in New Zealand to avoid examination in Australia. (sub. 79, pp. 2-3)

When registration requirements differ across jurisdictions, it will always be the case that mutual recognition will create the potential for some overall lowering of standards. However, it is not clear that the standards for professions overall have been lowered to a substandard level by 'back door entry'.

There is also a concern that such 'shopping and hopping' behaviour imposed inappropriate costs on jurisdictions. One example of this was described by the Dental Council of New Zealand. In its submission, the Council noted:

...It appears that South African dentists in particular are using New Zealand registration as an 'easier' entry to Australia. They gain NZ registration and then without having lived or practised in New Zealand, use their NZ registration to gain registration in Australia under TTMR. The current retention rate of overseas dentists registered in New Zealand without the need to sit and pass registration examinations is 40% at year two. This is a cause of concern. (sub. 4, p. 1)

While jurisdictional 'shopping and hopping' from one jurisdiction to another, a number of participants suggested imposing a residency or minimum practise requirement. For example, with respect to the TTMRA, the Chiropractors Board of Queensland recommended that:

...Trans-Tasman Mutual Recognition Legislation be amended so that a person must provide to the local registration authority a period of 6 months residency in either Australia or New

Zealand when lodging a notice for registration under Trans-Tasman Mutual Recognition Legislation. (sub. 24, p. 2)

DEST considered a period of practise in the first jurisdiction to be appropriate and recommended:

That the review consider the introduction of a minimum period of New Zealand professional practice to alleviate concerns that some professionals trained in a third country are using the TTMRA to gain permanent Australian residency, instead of going through the usual assessment processes for overseas professionals wanting to work in Australia. (sub. 26, p. 3)

However, constraints like minimum practise requirements would seem to be heavy-handed and difficult to administer, relative to the potential benefits. Where there are concerns that the practice is lowering standards or unduly adding to costs, the most appropriate action would seem to involve minimising the differences in requirements across jurisdictions.

Nevertheless, the difficulty of reaching agreement, and the extent of negotiation needed, should not be underestimated.”

“Current competency

Several participants expressed concerns about some instances of jurisdictions not requiring applicants to demonstrate current competence. In this context, a number of jurisdictions require professionals to have some degree of ‘recency of practise’ eg, to have practised sometime in the last, say five years, in order to gain (or retain) registration. There is an increasing tendency towards this, for example.....”

“5.3 APPEAL PROCESSES”

“Occupations

Formal appeal mechanisms exist for those individuals whose registrations have been declined or who have had conditions imposed on their registration.”

“More generally, some submissions expressed dissatisfaction with the appeal mechanisms open to them. For example, the Optometrists Association of Australia said:

Our concerns about the New Zealand Government’s decision to accept British optometric qualifications without examination have not been alleviated by the explanation of the appeals mechanisms available under the TTMRA. It would be beyond the resources of optometrists’ boards in Australia to make the necessary appeals and we find it difficult to believe that we would be able to influence the Ministerial Council on a matter such as this. (sub. 79, p. 4)”

“6 GOVERNANCE OF THE MUTUAL RECOGNITION SCHEMES”

“6.1 Standard setting”

“Standards for occupations are usually set by the professional bodies within an individual occupation, with input from government and industry as to the competencies they require from professionals in that field.”

“Exemption processes”**“Temporary exemptions**

Temporary exemptions may be implemented to protect the health and safety of persons or prevent, minimise or regulate environmental pollution (see, for example, sections 15.2 of the *Mutual Recognition (Commonwealth) Act 1992*). An exemption applies only in the jurisdiction that seeks the exemption and may operate for up to 12 months.

The temporary exemption process itself is straightforward.”

“7.2 PERMANENT EXEMPTIONS: OCCUPATIONS

The only permanent exemption for occupations relates to medical practitioners in the TTMRA.”

“C REGISTERED OCCUPATIONS AND LICENCES UNDER LEGISLATION

The Commission sought advice from the Australian States and Territories and the New Zealand Government on the occupations registered by their jurisdictions and therefore possibly subject to mutual recognition obligations.

All the responses will be collated and included in an appendix of the Commission’s final report.”

“E INTERSTATE MOBILITY BY OCCUPATION**E.1 Introduction**

This appendix uses data from Australia’s Censuses of Population and Housing for 1991, 1996 and 2001 to examine the geographic mobility of people employed in registered occupations subject to mutual recognition.”