



Optometrists and Dispensing Opticians Board

24 July 2015

Australian Government Productivity Commission
Mutual.recognition@pc.gov.au

Consultation on Productivity Commission Draft Report on Mutual Recognition Schemes

Background

1. The Productivity Commission (the Commission) is consulting on issues relating to mutual recognition schemes.
2. This submission is made on behalf of multiple (but not all) New Zealand health regulatory authorities regulated under the Health Practitioners Competence Assurance Act 2003. Some of the authorities represented in this submission are subject to the (New Zealand) Trans Tasman Mutual Recognition Act 1997 (TTMRA), while others are not because the profession they regulate is not regulated in Australia; generally these authorities operate non-legislated mutual recognition agreements with relevant bodies in Australia. Those who are not subject to the legislation are noted below with an asterisk *.
3. The authorities represented in this submission are:
 - The Dietitians Board of New Zealand*
 - The Medical Sciences Council of New Zealand (covering Medical Laboratory Technicians*, Medical Laboratory Scientists* and Anaesthetic Technicians*)
 - The Medical Radiation Technologists Board of New Zealand
 - The Midwifery Council of New Zealand
 - The New Zealand Chiropractic Board
 - The Occupational Therapy Board of New Zealand
 - The Osteopathic Council of New Zealand
 - The Optometrists and Dispensing Opticians Board of New Zealand
 - The Pharmacy Council of New Zealand
 - The Physiotherapy Board of New Zealand
 - The Podiatrists Board of New Zealand
 - The Psychotherapists Board of New Zealand.*
4. As previously communicated, for the most part, the TTMRA in its current form does not create significant issues for the authorities represented in this submission. However, we would not wish to see any loosening of current provisions as we believe this would have a negative impact on our ability to regulate effectively, and thus protect the public. Having reviewed the

Commission's draft report, we have focused this submission on key areas of concern to us noted in the report.

Automatic Mutual Recognition (AMR)

5. It appears from the report that the Commission considers that the barriers to AMR for health practitioners highlighted in our previous submission were not insurmountable and that it was entirely possible that AMR could be implemented for health practitioners across Australia and New Zealand. This raises significant concern for us, and for the avoidance of doubt, again, we would strongly oppose AMR being applied to any health professions regulated in New Zealand, for the following reasons as outlined in our previous submission:
 - a. The TTMRA is just one piece of legislation that is part of highly legislated health sectors both in New Zealand and Australia. There are legal and accountability frameworks to consider that extend far beyond the TTMRA and each jurisdiction's primary health regulation legislation. Under the AMR provisions, if a practitioner registered in New Zealand but practising in Australia harms a member of the Australian public, it is the New Zealand authority that would be responsible for dealing with that practitioner. Given the wider – and complex - legal framework that health regulation sits within in each jurisdiction, that would be nigh on impossible. For example, a NZ authority is legally required to refer any complaint it receives that has affected a consumer to the New Zealand Health and Disability Commissioner, which has no jurisdiction to investigate complaints by members of the Australian public. The upshot would be that New Zealand would have an unworkable complaints management system requiring widespread legislative change and wider Trans-Tasman arrangements with regard to handling of public complaints about healthcare providers. It is simply not practicable. In addition, professional indemnity insurance issues may arise for the practitioners themselves, particularly given the difference between the two countries' legal models for claims of medical misadventure. Amending the TTMRA to require health regulators to devolve regulatory responsibility to a foreign authority which is not subject to, and cannot rely upon, other relevant laws within the home jurisdiction will have major legal implications across the health sector in both countries, and will reduce public protection. Such a move would require quite radical law reform in NZ which we suggest would significantly outweigh the minimal benefit which might be gained by AMR for the health professions concerned.
 - b. TTMRA registration provisions ensure a process whereby trans-Tasman counterparts can share a limited amount of relevant information about a practitioner's complaint and other practice history at the time the application is made, including whether the practitioner has conditions limiting their practice. All of this is relevant to protecting the health and safety of the public in the jurisdiction in which the applicant wishes to work. Similarly, each practitioner needs to understand their professional responsibilities in whichever jurisdiction they are working, regardless of what entitlement they have to practise there. It is important that quality information about legal and professional obligations is provided to new registrants by the relevant registering authority. If AMR is implemented, the

bypassed authority is unlikely to even be aware of the presence of the practitioner in its territory, thus removing the opportunity for it to communicate with the transferring professional on their responsibilities; this exposes the professional to risk of falling foul of local laws, and the public to the risks associated with that departure from requirements. The Commission's draft report indicates that some simple system of 'checking in' with the presiding authority could be implemented whereby the authority would then know that the person was practising in their jurisdiction. This would be wholly insufficient and does nothing to address the issues discussed above or below.

- c. Costs associated with taking competence or disciplinary action against a practitioner registered in one jurisdiction but practising in the other would be borne by the profession based in the home jurisdiction, despite the issue having no impact on the members of the public the home jurisdiction is charged with – and funded for – protecting. Statistics maintained by the authorities indicate that numbers of practitioners using TTMRA provisions to go to Australia are generally higher than they are for coming to NZ. With this in mind, introduction of AMR would essentially mean that New Zealand authorities would take on a higher cost for regulation with no increased protection for members of the New Zealand public. That is untenable; it will not be acceptable to the profession which pays for its own regulation, or to (for example) the parliamentary regulator of fee-setting practices by statutory authorities in New Zealand, to whom any fee increases need to be justified. How this issue would be addressed if AMR was implemented for health professions does not appear to be covered in the Commission's draft report. We would welcome the Commission's thoughts on how this very important issue could be addressed to the satisfaction of practitioners, and also the Governments and general public of Australia and New Zealand who would undoubtedly, in turn, be burdened with the fall-out costs.

“Shopping and hopping”

6. We support the suggestion made in the Commissions draft report that 'shopping and hopping' could be prevented through the introduction of a residency requirement that would take the form of requiring new registrants to remain within a registering jurisdiction for a certain period of time before seeking registration in another jurisdiction. Playing down or ignoring the fact that 'shopping and hopping' is occurring in some professions is not an option. This issue needs addressing.

Ongoing registration requirements

7. As previously advised, we would vehemently oppose any provision for TTMRA registrants to be exempted from ongoing requirements for registration. Entitlement to registration is just that; it allows a person entry to the Register. Once there, all registrants - whether TTMR, overseas trained, or qualified in the home jurisdiction - must meet all statutory requirements set by their regulator, including those required for renewal of authority to practise each year. The annual renewal requirement is a key opportunity for the regulator to satisfy itself that the registrant is maintaining competence and fitness to practise, which is an essential aspect of public protection.

We, therefore, strongly support the Commission's draft recommendation that Governments should jointly state that the intent of the mutual recognition legislation is to allow continuing professional development requirements to be applied equally to all persons when renewing their registration [authority to practise].

Background checks

8. Police checks, criminal-history checks, and more recently, working-with-children checks, are an important part of verifying that individuals are safe and fit to practise in the jurisdiction within which they are being registered. We, therefore, strongly support draft recommendation 5.5 in the Commission's report which recommends that registration bodies should be able to continue to conduct their own checks on people seeking registration under mutual recognition.

Thank you for the opportunity to comment on the draft report. While we appreciate that there are a number of different professions affected by any potential changes to the mutual recognition schemes, including some who will welcome a lot of the potential changes discussed, we do have some very real concerns about the impact such changes will have on the regulation of the health professions in New Zealand and the maintenance of public health and safety, in particular, those related to AMR.

You are most welcome to contact me directly if you wish to discuss the issues raised in our submission.

Yours sincerely

Lindsey Pine

Registrar, Optometrists and Dispensing Opticians Board

(on behalf of, and with the agreement of all authorities named in this submission).