



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

6 August 2015

Mr Jonathan Coppel
Presiding Commissioner
Mutual Recognition Schemes Study
Productivity Commission
Melbourne VIC 8003

Via email: mutual.recognition@pc.gov.au

Dear Mr Coppel

Submission from National Boards and AHPRA

The National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) are pleased to provide the following joint response to the Productivity Commission's *Draft report on Mutual Recognition Schemes*.

As noted in our previous submission, the Trans-Tasman Mutual Recognition Arrangement (TTMRA) applies to almost all professions in the National Registration and Accreditation Scheme (the National Scheme), so the draft report is directly relevant to National Boards and AHPRA.

Our response reiterates key points from our previous submission which are discussed in the draft report and comments on some aspects of the draft report with specific relevance to the National Scheme, including how the report describes the National Scheme. As in our previous submission, the joint response touches on some complex issues (both legal and profession specific). If any aspect of the response is of particular interest to the Commission we would be happy to provide further information or meet with members of the Commission to discuss if that would assist.

If you wish to discuss this matter, please contact Chris Robertson, Executive Director Strategy and Policy Directorate or Helen Townley, National Director Policy and Accreditation

Thank you again for the opportunity to comment.

Yours sincerely

Martin Fletcher
Chief Executive Officer

Paul Shinkfield
Chair, Forum of National Board Chairs
Chair, Physiotherapy Board of Australia

Attachment A: Joint submission from National Boards and AHPRA

Submission to the Productivity Commission draft report on mutual recognition schemes

National Boards and AHPRA agree with the Commission's general conclusion that mutual recognition is working reasonably well. However, we have the following comments on specific aspects of the draft report.

Draft recommendations of most relevance to the National Scheme

The draft recommendations of most relevance to the National Scheme are:

5.2 Where the Australian, State, Territory or NZ Governments have valid concerns about different occupational standards across jurisdictions leading to harmful 'shopping and hopping', they should first make use of the schemes' existing remedies, including Ministerial Councils and imposing conditions on registration to achieve equivalence of occupations.

5.4 Governments in Australia 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. This should be reflected in the official users' guide for the schemes.

5.5 For occupations where background checks are necessary and are routinely required of local applicants, registration bodies should be able to continue to conduct their own checks on people seeking registration under mutual recognition. If this is successfully challenged in the relevant tribunals in the future, governments should amend the mutual recognition legislation.

Draft recommendation 5.2 – using existing remedies

1. We note the Commission's comments on the different occupational standards across jurisdictions leading to 'shopping and hopping' under the TTMR Act and the Commission's view that there is scope to make better use of existing remedies under TTMRA to deal with concerns about 'shopping and hopping'.
2. We also note the Commission's comments on page 122 that New Zealand registration authorities have experienced issues with 'shopping and hopping'. Specifically, the New Zealand Psychologist Board has suggested that 38 New Zealanders and 23 psychologists of other nationalities applied to Australia with qualifications that would not have met the New Zealand requirements, and then came to New Zealand under TTMR Act.
3. National Boards have had similar concerns with NZ registrants applying for registration under the National Law via the TTMR Act. That is, that some New Zealand registration bodies may have less stringent requirements than Australian registration requirements; and that practitioners who might not obtain Australian registration by directly applying under the National Law may obtain it via the TTMR Act.
4. To take a practical example, one National Board has become aware of an internationally qualified practitioner who was refused registration in Australia as her international qualifications were insufficient. However, this practitioner then obtained registration in New Zealand due to less stringent qualification requirements.
5. This situation creates significant risk if a practitioner is not properly qualified according to Australian registration standards, and circumvents qualification requirements using the mutual recognition scheme.
6. We note the Commission's comments on page 119 that the intent of mutual recognition is that differences in occupational standards, such as qualifications, skills and experience, required to obtain and retain registration, are not grounds to reject an application. Further, the Commission observes that jurisdictions participating in mutual recognition schemes have agreed to accept each others' standards, even when the standards are different. The draft report explains that the existing remedies under TTMRA including use of Ministerial Councils

and imposing conditions on registration are intended to address situations where these differences raise concerns.

7. We note that although our previous submission raised concerns about ‘shopping and hopping’ in some registered health professions, the draft report does not comment on these cases, suggesting that the Commission may not be persuaded about the issues. Instead, the draft report comments that “in many ways, shopping and hopping is a desired outcome of mutual recognition of occupations” (page 127). The draft report acknowledges the potential that outcomes under the least stringent jurisdiction’s requirements may not meet community expectations, but indicates that the Commission was not presented with compelling evidence of harm. We suggest that in occupations with the potential for significant harm, such as health professions, the potential for such harm should be enough to justify action rather than the need to demonstrate that actual harm has occurred.
8. We reiterate our concerns, and note that if they persist, the relevant National Board may decide to pursue existing remedies under TTMR as outlined on page 125.
9. Further, the Commission has recommended that existing TTMR Act remedies are sufficient to address the shopping and hopping issue. However, our view is that to effectively address the ‘shopping and hopping’ issue, there is a need for more accessible remedies under the TTMR Act for registration bodies to address situations where the qualifications required for registration are not equivalent between New Zealand and Australia, in particular where the differences might jeopardise patient safety.

Draft recommendation 5.4 – application of continuing professional development (CPD) requirements

10. As noted in our previous submission, we strongly support action to clarify that CPD requirements apply to all individuals renewing their registration. This is the current practice under the National Scheme.
11. We note the Commission’s comment on page 134 that the benefits of CPD should outweigh their costs. The National Law requires each National Board to develop a registration standard setting its CPD requirements. The Boards are conscious of the need to maximise the benefits of CPD and are increasingly monitoring the research literature to achieve this outcome.
12. We further note the Commission’s comments about mutual recognition of CPD, and advise that the National Boards’ CPD requirements would generally present no obstacle to this.

Draft recommendation 5.5 – background checks

13. We strongly support the draft recommendation that registration bodies should be able to continue to conduct their own background checks on people seeking registration under mutual recognition. We note the comments made in the draft report about the National Scheme and its criminal history checking requirements at pages 137 - 138. The Commission’s proposed approach that regulators should apply their background check requirements pending any successful challenge in a Tribunal is pragmatic and could be implemented immediately. However, this approach would deliver less certainty than amending the legislation to be explicit that regulators have the power to apply standard background checks to individuals seeking registration under mutual recognition. We would prefer the Commission’s proposed approach as an interim arrangement pending amendment of the legislation.
14. Ideally the TTMR Act should expressly give the Australian registration authority:
 - a. the right to require applicants to consent to, or obtain their own, criminal history or other relevant background check; and
 - b. the power to refuse registration if a background check or criminal record indicates the person is not suitable for registration.

15. Similarly, to avoid doubt, the TTMR Act should also clearly authorise a local registration authority to require a TTMR applicant to provide:
 - a. adequate proof as to his or her identity before he or she can be regarded as having lodged a valid TTMR application; and
 - b. if required, certified proof of his or her New Zealand registration, in the form of an original Certificate of Registration Status from the relevant NZ local registration authority.

It is not clear how s.30(2)(b) works. Can this be fixed?

16. Section 30 of the TTMR Act allows the Australian Tribunal to make a declaration that occupations carried on in New Zealand and an Australian jurisdiction are 'not equivalent' in certain circumstances.
17. Section 30(2)(b)(ii) provides that the Tribunal may declare that registration in New Zealand should not entitle persons to carry on particular activities in Australia where the activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons to a real threat to their health or safety.
18. We agree that the Australian Tribunal should have this important power to protect the Australian community's welfare. However, it is not clear how a relevant case could be put before the Tribunal for it to exercise the power under s.30(2)(b)(ii), which in practice means the provision is ineffective.
19. It is not clear how an Australian local registration authority can make a decision that would trigger the Tribunal's jurisdiction to make a public safety-based decision under s.30(2)(b)(ii). As the registration authority does not itself have the power to refuse registration to a TTMR Act applicant on public safety grounds, it is not clear how such a case would end up before the Tribunal, in order for the Tribunal to consider 'public safety' grounds for denying registration. Accordingly, it appears that s.30(2)(b)(ii) is not achieving its intended purpose.
20. We consider that there should be a clear and simple pathway to activate the Tribunal's jurisdiction under s.30(2)(b)(ii). The simplest path would be to amend the TTMR Act to empower local registration authorities to refuse registration on the basis of a threat to public health and safety if registration were granted. This would make the path to the Tribunal clear.
21. Under purely domestic law, local registration authorities make decisions to protect public health and safety. It is not clear why they should not have similar powers in relation to TTMR Act matters.

Local registration authorities should also have the power to refuse TTMR applicants who are not 'suitable' for registration

22. It would be helpful to explicitly clarify that the TTMR regime does not displace a local registration authority's inherent power to refuse registration to a person who is not suitable for registration.
23. Part 7 of the National Law empowers a National Board (i.e. a local registration authority) to refuse an application on the grounds the applicant is not a 'fit and proper' person. This is an important public protection mechanism, which prevents the registration of practitioners who (for example) may have a criminal history that indicates it is not in the public interest for them to practise.
24. Accordingly, it would be helpful to clarify that the TTMR Act involves deeming an applicant to be sufficiently experienced and qualified for registration, but does not displace a local registration authority's power to refuse registration on the ground the applicant is not suitable for registration.

Other comments

25. We note the comments at pages 103 - 109 about the need for all occupational registration schemes to be rigorously assessed and evaluated, given their potential to impose unnecessary costs, restrict competition and increase prices. The need for health practitioner regulation through the National Scheme was rigorously assessed and comprehensively evaluated when the Scheme was developed, including through a formal Regulatory Impact Statement process. While the future of the Scheme is a matter for state and territory governments, the 2014 Discussion Paper from the independent review of the National Scheme confirmed the continuing need for the Scheme.
26. While we note the Commission's comments that the National Scheme is a form of regulation more typically referred to as "licensing", a publicly available register of all registered practitioners is a key component of our scheme. Health practitioner regulators in countries such as the United Kingdom also describe their work as registration rather than licensing.

Proposal to remove the exemption from TTMRA for medical practitioners

27. As indicated in our earlier submission, we consider that the current exemption from TTMRA for medical practitioners is working well and oppose removing the exemption. We note that the report concludes that the exemption has no practical effect because administrative arrangements achieve the same outcome (pages 142 – 143). The report also indicates that although removal would reduce the number of exemptions to the scheme, there would be few other benefits and that converting the permanent exemption of medical practitioners into a special exemption would be a second order priority.
28. From the National Scheme's perspective, there seem to be no compelling reasons to change the current approach and the implications of removing the exemption are not clear, particularly in relation to international medical graduates. We note the Commission's view that the principle of mutual recognition should apply to all occupations, and that any exemption should be avoided. However, if the exemption is removed the potential impact of this on the National Scheme could be substantial and difficult to predict, in an area critical to public safety.
29. Accordingly, if the Commission were to consider any more specific proposal to remove the exemption, comprehensive work would need to be done to understand all the possible implications, particularly in relation to international medical graduates. Given the potential impact on the National Scheme, we would request to be involved in this work.

Rewording suggestions

30. On page 110, the draft report should refer to National Boards as registering health practitioners, as under the National Scheme this is a Board function rather than an AHPRA function.
31. Page 111 summarises the National Scheme. For accuracy we suggest the following rewording:
 - Paragraph 5, replace second and third sentences with the following: "Applicants must meet qualification requirements for registration, most commonly through completing an accredited and approved program of study. Programs of study are accredited to ensure that graduates have the knowledge, skills and professional attributes to practice their profession in Australia."
 - Paragraph 6, replace with the following: "The most common types of registration are general registration, student registration (for people enrolled in an approved program of study) and specialist registration (for practitioners in a recognised specialty). To be eligible for general registration, a person must be qualified for registration, have completed any period of supervised practice, examination or other assessment required"

by a registration standard and must meet other requirements set in registration standards, including English language skills and criminal history registration standards.

- Paragraph 7, replace with the following: “A registered health practitioner may also apply to have their registration endorsed, where Ministers have approved the availability of the endorsement. An endorsement enables a registered practitioner to practice in an area that requires additional qualifications and experience. Registration, including endorsements, need to be renewed annually.