HRANZ
Health Regulatory Authorities Of New Zealand

27 February 2014

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

Consultation on Mutual Recognition Schemes

Background

1. The Productivity 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 *. We note that the list of professions regulated under the Australian National Registration and Accreditation Scheme (NRAS) has already been extended since the NRAS came into place in July 2010. This could occur again, bringing the TTMRA into effect for regulatory authorities in New Zealand that are not currently subject to it.

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. For the most part, the TTMRA in its current form does not create significant issues for the authorities represented in this submission, and with that in mind our comments focus on some of the proposals put forward in the Issues Paper. 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.

Home registration provisions

5. It is not clear from the consultation document how widespread the provision allowing for a "home registration" is intended to be, or whether it is expected that it will expand over time. We assume that it is not intended, at any time, to include health professionals under this provision, but for the avoidance of doubt, we would strongly oppose a home registration provision being applied to any health professions regulated in New Zealand, for reasons including the following:
    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 proposed home registration 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.

    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 a home registration process 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.

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 a home registration provision 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.

"Shopping and hopping"

6. In relation to health professions, the TTMRA is supported by memoranda of understanding (MOUs) between trans-Tasman counterparts, which generally work closely together to ensure similar standards – both for initial registration and for ongoing competence. "Shopping and hopping" as it is described in the Issues Paper, exists, but in most cases it is more of an administrative inconvenience than a risk to the public because registration standards (occupational equivalence) between the two countries are largely aligned.

7. The risks associated with shopping and hopping are more real in at least one profession; osteopathy. In New Zealand, all overseas trained osteopathy registrants (except TTMRA applicants) have a condition placed on their practice requiring them to undertake a year's preceptorship at initial registration. The intent of the preceptorship is to assist the practitioner to become familiar with New Zealand practising standards and requirements and is set by the Osteopathic Council as a necessary part of ensuring overseas trained registrants are practising safely. However, a similar requirement does not apply in Australia; newly registered osteopaths are required to complete an online supervision course, but this is not set as a condition on their registration. The Osteopathic Council notes that there have been instances of overseas trained osteopaths registering in Australia and then either registering directly in New Zealand, or after practising for only a

brief period in Australia. These practitioners manage to avoid the preceptorship condition that would be applied to their practice if they registered through a pathway other than the TTMRA. The Osteopathic Council is of the view that this loophole presents a risk to the public.

8. As a general note, the risks associated with shopping and hopping would increase if (for example) initial registration standards became misaligned without significantly altering the occupational equivalence of a profession; that is, if the two jurisdictions did not agree on the general standard of training, skill and knowledge required to practise safely. It is perhaps a weakness of the TTMRA that it relies heavily on the effectiveness of the policy and other support structures that sit below it. It needs to be sufficiently robust that both jurisdictions are protected in the event that one party changes its position on a core registration issue, or relationships that currently support the effective administration of the TTRMA break down. We note the difficulty in achieving this while also trying to enable relative freedom of movement between the two countries.

Ongoing registration requirements

9. The authorities 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.

Maintenance of expertise within authorities

10. The authorities note questions raised in the Issues Paper with regard to maintenance of expertise, particularly within small authorities. We do not consider there are any substantive issues relating to maintenance of expertise – whether in small authorities or larger ones. The TTMRA application process is a fast-track process with a much simpler registration process than a standard registration. Forms and processes are standardised, and in New Zealand there are strong collegial relationships between authorities which facilitate knowledge sharing.

Professional disciplinary debt recovery

11. We note the recently implemented Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement provides a framework for greater cooperation between Australia and New Zealand, with the aim of making a trans-Tasman court case more like a court case between parties in the same country. We note that one of the stated objectives is to have a broader range of Australian court judgments recognised and enforced in New Zealand.

12. One of the issues we have experienced is the avoidance of professional disciplinary debts by practitioners moving to Australia. Professional disciplinary debts are imposed by the New Zealand Health Practitioners Disciplinary Tribunal (the Tribunal) following a disciplinary process. They may include an award of costs to the authority, and/or a fine. Section 105 of the Health Practitioners Competence Assurance Act provides that fines, costs and expenses ordered by the Tribunal to be paid are recoverable by the relevant authority in any court of competent authority, as a debt due to the authority. However, where the practitioner has moved to Australia, utilising combined New Zealand and Australian court processes to recover the debt is an expensive and legalistic process, only justifiable where the debt is likely to exceed the costs involved in recovering it.

13. We would welcome provision for a requirement for applicants under TTMRA to disclose to the registering authority any professional discipline debt owed to the home authority, and provide evidence that the applicant is repaying the debt owed. Alternatively, perhaps there could be provision for an arrangement whereby the registering authority is able to recover the debt on the home authority's behalf as part of the registration process, and return it to the home authority.

Alternative models of regulatory cooperation

14. The Issues Paper asks for commentary on whether there are alternative models of regulatory cooperation, and provides a list of examples. We note that the items on the list are not mutually exclusive, and are indeed already in use alongside the TTMRA. The authorities operate MOUs with their Australian counterparts (described in the document as "soft law" or non-legally binding agreements), harmonised standards, dialogue and information exchanges.

Thank you for the opportunity to comment on the Issues Paper. You are most welcome to contact me directly if you wish to discuss the issues raised in our submission.

Yours sincerely

Jeanette Woltman-Black
Chief Executive
Physiotherapy Board of New Zealand

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