SUBMISSION TO THE PRODUCTIVITY COMMISSION
MUTUAL RECOGNITION AGREEMENT REVIEW

ROLE OF THE AUSTRALIAN MEDICAL COUNCIL IN THE MUTUAL RECOGNITION AGREEMENT (MRA)

The Australian Medical Council (AMC) is an independent national standards and examining body which deals with standards of basic and postgraduate medical training. It has an advisory role to Health Ministers and Medical Boards on matters relating to medical registration in Australia.

The AMC has two specific tasks in relation to the implementation of mutual recognition:

1. At the request of Health Ministers and as part of the mutual recognition scheme, the AMC has developed and maintains a database drawn from the individual State and Territory Medical Registers to facilitate the exchange of information between Medical Boards concerning individual medical practitioners.

2. Through its Joint Medical Boards Advisory Committee it provides a forum for the exchange of information and expertise on matters relating to the registration of doctors, including mutual recognition matters.

EFFECTIVENESS OF THE CURRENT MRA

Overview of the MRA

The current MRA, although not without problems, is generally regarded as an effective process for facilitating the movement of medical practitioners between jurisdictions in Australia. It has simplified the processes by which individual practitioners can obtain registration and has formalised the exchange of information between jurisdictions relating to individual practitioners seeking registration under the provisions of the MRA.

Although there were significant movements of doctors between jurisdictions, the initial concerns that the implementation of the MRA would result in a major “leakage” of doctors from areas of workforce shortage to more attractive urban areas have not eventuated. However, there are examples of individual doctors seeking to use mutual recognition to circumvent disciplinary restrictions or sanctions imposed by relevant jurisdictions. More recently, an apparent lack of harmonisation in legislative developments has seen the implementation of differing registration requirements in the individual jurisdictions, the effects of which may be compounded by the MRA.

Trans-Tasman Mutual Recognition Agreement (TTMRA)

The Trans-Tasman Mutual Recognition Agreement (TTMRA) has not been an issue for medicine in Australia, because this occupation group has been formally excluded from the provisions of the TTMRA by the Australian Government. The AMC understands that the decision to exclude medicine related to concerns about the impact of an influx of medical

practitioners on the universal health insurance system (Medicare). However, this is outside the charter of the AMC and the Council is not in a position to comment on this aspect of the Trans-Tasman arrangements.

The AMC notes that the criteria for recognition of certain medical qualifications for the purposes of registration in New Zealand differs from that agreed nationally in Australia. If the exclusion of medicine from the TTMRA is withdrawn, there will need to be agreement on the harmonisation of basic standards for registration between Australia and New Zealand.

Issues for Consideration

Underlying Principles of MRA

The MRA was based on the principle of a "level playing field". In the case of medicine, it assumes that the requirement for initial registration and the provisions for the on-going monitoring of standards of practice are uniform throughout Australia. This is clearly not the case. While all States and Territories may agree in principle on matters relating to medical registration, there are variations in the relevant legislation that empower Medical Boards to monitor the standards of doctors.

As an example, in one State the failure of a doctor to provide the relevant Medical Board with access to his/her medical records in response to a complaint would itself constitute a breach of the relevant Act. However, in another State the relevant Board can not obtain access to such medical records without obtaining a court order. The access may not be guaranteed in the second case.

Lack of Harmonisation in Related Regulations

The current MRA provides that a registered practitioner, who is not subject to any disciplinary action or restrictions, may practise in another jurisdiction subject only to notifying the second jurisdiction in the prescribed manner and the practitioner is subject to any restrictions or conditions in the first jurisdiction, they may also be imposed by the second jurisdiction.

A problem arises when the practice of a doctor is regulated by different legislation ***within*** a jurisdiction and there has been no harmonisation of the legislation in that jurisdiction. As a result, the bodies that have oversight of that legislation do not communicate with the relevant Medical Boards. Since the Board may be unaware of a restriction on the practice of an individual doctor, it can not notify the second jurisdiction of that restriction. The doctor concerned is registered in the second jurisdiction under the MRA and can thereby circumvent restriction. This problem arose in one State in relation to prescribing rights which were administered under the *Poisons Act* of that State by a separate State authority. Since that authority failed to notify the Medical Board when restrictions on prescribing rights were imposed, the doctors concerned were not identified on the medical register as subject to any conditions.

Attempts to Circumvent Disciplinary Sanctions

The most common on-going problem with the MRA is the attempt by individual practitioners to circumvent disciplinary sanctions. Under the provisions of the MRA, an applicant for registration must indicate that they are not subject to disciplinary action in another jurisdiction. Unfortunately, there are examples of practitioners who hold registration in multiple jurisdictions, but who fail to indicate that they are subject to investigation and choose only to indicate the jurisdiction in which no action against them has been taken. It may be some time before the error is confirmed and action is taken under Section 23(1) of the *Mutual Recognition Act*. During this time the practitioner is able to continue to practice without the

restrictions in force, and, thereby, may constitute a danger to the community in the second jurisdiction.

Scope of the MR Legislation

The MR legislation requires a practitioner to indicate that he/she is not subject to any restrictions on the scope of practice arising from "..criminal, civil, or disciplinary proceedings" (Section 19(1) (f)). A number of Medical Boards are now utilising voluntary undertakings to limit the scope of practice in cases that have not yet progressed to disciplinary proceedings. In some cases these may be applied in conjunction with remedial and rehabilitation programs. There is concern that these voluntary undertakings do not fall within the definition of Section 19 (1) (f) and can not therefore be a condition of granting registration under the MRA. It is recommended that the MR legislation be amended to include provisions for voluntary undertakings.

Attitude of State Legislatures

The MRA implies some sense of "mutual responsibility", in that the actions of any one jurisdiction may have consequences in all other participating jurisdictions. When mutual recognition was implemented in 1993, this concept appeared to be well understood. In the case of medicine, many of the problems that were experienced in other professions regarding equivalence were avoided by agreements that were reached between the States on uniform national standards for general registration.

Since the implementation of the MRA, the review of legislation by each State and Territory, as a result of the implementation of the national competition policy has seen a divergence between the individual Medical Acts, as each jurisdiction adopted different approaches to regulatory reform. As a result, there are now individual Acts that set different requirements for registration and have the potential to undermine the agreed national standards that form the basis of mutual recognition. An example, for this is the current requirement for doctors in New South Wales to have medical indemnity cover, which is not reflected in any other legislation in Australia. While there may be a good case for requiring professional indemnity cover for registered doctors, the absence of similar provisions in other States and Territories has generated an anomaly in the requirements for registration.

Another aspect of this problem has been the practice of individual States to amend their legislation to deal with specific local concerns without regard to the consequences for other jurisdictions. One State, in order to deal with a specific local problem, amended its Medical Act to specifically grant registration to a group of doctors who did not meet the agreed national standards and who were not eligible to register in any other jurisdiction in Australia. Once the legislation had been amended, the doctors concerned moved to other States under the MR provisions, even though they would not otherwise have been eligible for registration under the provisions of the local Medical Acts in those States.

Appeals Provisions

The MRA provides for disputes on the application of the MR legislation to be considered by the (Commonwealth) Administrative Appeals Tribunal (AAT). Possibly as a result of the agreement reached by Health Ministers in 1991 on national standards for general registration, the implementation of the MRA in relation to medical registration has not resulted in any cases being referred to the AAT.

Medical Boards have used the definition of equivalence of occupation, as set out in Section 17 of the *Mutual Recognition Act* as the criterion in deciding on specific cases. The Boards

have also taken into consideration the decisions of the AAT in relation to cases involving equivalence of occupation in related professions, such as nursing.

FURTHER DEVELOPMENT OF MUTUAL RECOGNITION

Application of Mutual Recognition

There is currently a major debate taking place on the development of more consistent approaches to medical registration in Australia and the streamlining of registration procedures. The approaches being taken assume that the existing State and Territory jurisdictions will continue to be responsible for registration under any further development of the MRA.

The initiatives to enhance the application of mutual recognition under consideration include:

- Implementation of a national identifier to facilitate the registration of individual practitioners across jurisdictions
- Re-design of the current national network of State and Territory medical registers to form an Australian Index of Medical Practitioners
- Development of electronic processing of applications for registration under mutual recognition
- Development of a "central clearing house" for electronic processing of mutual recognition applications.

The Australian Health Ministers Advisory Committee (AHMAC) has established a Working Party of key stakeholders, including representatives of State and Territory Governments, the Australian Medical Association and health consumers, to oversee the further development of these initiatives.

FURTHER INFORMATION

The Australian Medical Council is willing to provide further information on the matters raised in this submission and would be willing to participate in any further discussion of these matters.

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28 March 2003

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