

REVIEW OF MUTUAL RECOGNITION SCHEMES

28 July 2008

Ms C Gardner
Mutual Recognition Review
Productivity Commission
LB2 Collins St East
Melbourne Victoria 8003

Dear Ms Gardner,

Below you will find comments specific to the questions outlined in the paper concerning the Mutual Recognition Arrangements (MRA) and the Trans-Tasman Mutual Recognition Arrangements (TTMRA) released by the productivity commission on 12 June 2008.

The comments we make are restricted to the arrangements as they relate specifically to optometry as we do not feel qualified to judge the arrangements overall.

Optometrists Association Australia is the peak body for optometry and optometrists in Australia. It is a voluntary membership organisation. More than 95 per cent of optometrists practising in Australia are members of the Association.

Rationale for mutual recognition

What have been the benefits of mutual recognition under the MRA and TTMRA, and what evidence is there to support your assessment?

Movement of optometrists across State and Territory boundaries and between Australia and New Zealand was relatively easy for many years before the mutual recognition arrangements were introduced. Optometric registration legislation in each of the jurisdictions concerned recognised qualifications gained in all optometric teaching institutions in Australia and New Zealand

The mutual recognition arrangements simplified the administrative arrangements and the amount of paper work that practitioners were required to complete and standardised the processes concerned.

What evidence is there that differing laws for the sale of goods and registration of occupations would, without mutual recognition, significantly impede cross-border movements of goods and labour?

In the case of optometry, there were few laws in relation to registration that significantly impeded the movement of optometrists between the jurisdictions concerned. There had been much effort by legislators, and the associations of

optometrists in Australian and New Zealand to minimise the impediments prior to mutual recognition arrangements being introduced.

What have been the costs of implementing and maintaining mutual recognition under the MRA and TTMRA, and to what extent are these outweighed by the benefits?

The financial impact of the arrangements has been different for the different stakeholders.

Practitioners who are registered have enjoyed some minor savings when registering in jurisdictions other than the one in which they were initially registered.

Overseas practitioners seeking registration in Australia and New Zealand have incurred the cost of sitting examinations and any travel associated with sitting the examination away from home. The costs are probably little different to the cost of examination that would be incurred had mutual recognition not been in place.

Registration boards have incurred costs in maintaining consistent implementation of the arrangements but have also made some savings in administration as a result of the introduction of the mutual recognition arrangements. The boards have also incurred the expense of supporting the operations of the Optometry Council of Australia and New Zealand that examines overseas applicants on behalf of the boards. Again, the costs are probably little different to the cost of examination that would be incurred had mutual recognition not been in place.

Optometrists Association Australia has incurred considerable cost (hundreds of thousands of dollars) over the years in developing and maintaining competency standards that were acceptable to all parties and fundamental to the operations of the arrangements. Government funding partially covered the cost of initially establishing the competencies but no funding has been received for their subsequent updating.

For which goods and occupations is mutual recognition a better alternative than harmonisation, in the sense that it generates a greater net benefit to the community?

Harmonisation and mutual recognition are not mutually exclusive. Optometry's experience is that mutual recognition operates best when there is harmonisation. Where there are significantly different regulations or educational standards administration and interpretation of the arrangements becomes difficult.

Harmonisation is effectively in place already for optometry within Australia with few major differences in regulation existing between jurisdictions. It will be further achieved in Australia once national registration is implemented.

The tensions that currently exist in maintaining a working TTMRA for optometry will continue to exist irrespective of the approach adopted. Workforce and political pressures have at times made it difficult to keep the arrangements working smoothly.

Coverage

Do you have any concerns about the broad architecture used to keep specific goods, occupations and laws outside the coverage of the MRA and TTMRA? If so, what are the relevant issues, how significant an impact do they have on the efficiency and effectiveness of the MRA and TTMRA, and what are the costs and benefits of any changes you recommend?

Do you have any concerns about the interaction between the MRA and TTMRA and any other legislation? If so, what are your concerns about the effectiveness and efficiency of the MRA and TTMRA

and the other legislation? What changes would you recommend, and what costs and benefits would they involve?

Regulation of the scope of services of the health professions is controlled by the registration Acts and other legislation. Most notable in the other group are the various drugs and poisons Acts that control who may prescribe drugs for the treatment of disease and which drugs they can prescribe.

This legislation has a major impact on the work that practitioners do and if it differs between jurisdictions then the nature of the work that is carried out by practitioners will vary between jurisdictions.

Optometrists can prescribe drugs in all jurisdictions concerned except Western Australia. The drugs they can prescribe vary between jurisdictions. The coverage of optometrist prescribed drugs under the Commonwealth's Pharmaceutical Benefits Scheme is different again. The obvious impact of the differences is that patients receive a varying range of services from optometrists even though the optometrists have been trained to the same standards and access to some forms of care is denied to patients on the basis of local legislation rather than competence.

An interesting secondary effect is that optometrists are less inclined to practise in jurisdictions that do not allow them to practise to the full extent of their capabilities. All the optometry schools in Australia are on the east coast: the limitations on their practising in, for example, Western Australia discourages young graduates from moving to restrictive jurisdictions.

For mutual recognition to work effectively peripheral legislation must be harmonised.

Permanent exemptions

Is there still a case for clarifying and simplifying the process for removing permanent exemptions from the MRA, and if so what changes do you recommend? What would be the costs and benefits of your recommended changes?

We do not know of any exemptions in the case of optometry.

Should the permanent exemption for ozone protection be retained, and if so why?

We do not have the expertise to comment on this issue

Should the TTMRA permanent exemption for risk-categorised food be retained, and if so why? What are the benefits and costs of your recommended approach?

We do not have the expertise to comment on this issue

Temporary exemptions

Is there a case for further streamlining the process used to resolve the issues underpinning temporary exemptions? If so, what changes do you propose and what are their costs and benefits?

Has the lack of a mechanism for Australian states and territories to jointly obtain a temporary exemption under the TTMRA led to significant unnecessary costs? If yes, what evidence do you have to support this and what measures do you recommend to address the problem? What would be the costs and benefits of your recommendation?

Do you expect the benefits of continuing to roll over the remaining special exemptions annually will outweigh the costs? If so, what evidence do you have to support your conclusion?

What actions do you recommend to remove the remaining special exemptions under the TTMRA? What are the costs and benefits of your recommended actions, and are they feasible in light of the different positions Australia and New Zealand have maintained on a number of matters?

We know of no temporary exemptions in optometry.

Special exemptions

What are the costs and benefits of the annual rollover process for TTMRA special exemptions, and does it generate a net benefit?

What reforms do you recommend to address concerns about the limited cost effectiveness of annual rollovers for TTMRA special exemptions? What would be the costs and benefits of your suggested reforms?

We know of no special exemptions in optometry.

Exceptions and exclusions

To what extent are different regulations governing the use of goods impeding inter-jurisdictional trade, and what would be the costs and benefits of extending mutual recognition to those regulations?

Optical appliances, including spectacles and contact lenses and various pieces of equipment used in the examination of the eye, are regulated by the Therapeutic Goods legislation in Australian and New Zealand. We are unaware of any problem arising from differing legislation of any impediments to trade and movement of goods as a result of the different arrangements in each country. In the field of optometry, extending the TTMRA to cover goods is likely to have negligible effect.

Are use-of-goods regulations being used to circumvent mutual recognition obligations? If so, please provide evidence and indicate how this problem can be addressed.

We do not know of any examples of use-of-goods regulations being used to circumvent mutual recognition obligations.

Do you consider that occupations registered under co regulation should continue to be outside the coverage of the MRA and TTMRA, and if so why?

Co regulation does not apply to optometry.

Should negative licensing arrangements for occupations be explicitly covered by the MRA and TTMRA? If so, how would this be achieved and what would be the benefits and costs?

Negative licensing does not apply in optometry.

Should the character checks required for some occupations continue to not be mutually recognised across Australian jurisdictions and with New Zealand? If so, why, and what evidence do you have that the benefit of not having mutual recognition outweighs the cost?

While there might not be strong evidence that the benefit of character checks outweighs the cost, there is an underlying logic in support of character checks being included in the TTMRA arrangements for the health care professions. There is, in the health care professions, potential for a practitioner to cause physical or psychological harm to people for whom they are caring. We believe that in the circumstances the risks outweigh the costs.

Can you nominate any cases where business licensing requirements are being used to circumvent mutual recognition obligations for the registration of occupations? In such cases, what would be the costs and

benefits of separating occupation-registration requirements from the associated business licensing conditions?

We are unable to provide examples where business licensing requirements are being used to circumvent mutual recognition obligations for the registration of occupations.

Occupations

Are registration bodies assessing the equivalence of occupations between jurisdictions in markedly different ways, and if so, what impact is this having on cross-border labour mobility?

Optometric authorities have at times found it difficult to interpret the 'substantially the same' criterion. The most striking example has been in regard to optometrists with extra qualifications that permit them to prescribe drugs for the treatment of eye disease. An optometrist who is qualified to prescribe drugs in one State of Australia will frequently find that he or she is permitted to prescribe a smaller range of drugs in another State despite the qualifications and training to attain the level of licensing that permits the optometrist to prescribe drugs being the same in both jurisdictions.

It would appear that the confusion in connection with the principles of equivalence is leading to the adoption of a conservative approach that in some States unnecessarily restricts access to comprehensive optometric care.

Are appeal mechanisms for the mutual recognition of registered occupations effective? Are individuals discouraged from making appeals because of a lack of awareness of appeal mechanisms and/or their cost? If so, what reforms do you recommend and what would be their costs and benefits?

No problems with the lack or inadequacy of appeal mechanisms in the TTMRA or the MRA as they relate to optometry have been drawn to our attention.

Conditions and prerequisites

How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?

Are occupation-registration bodies applying their prerequisites for initial registration to people seeking registration under mutual recognition? If so, what is the extent of this problem and how can it be addressed?

It is our understanding that, in optometry, special conditions have rarely, if ever, been imposed on people registering under mutual recognition.

Jurisdiction shopping and hopping

Do you have knowledge of areas in which discussion and negotiation between registration bodies have made mutual recognition of occupations possible? Can you provide information on the adjustments that were made to achieve equivalence?

The optometrists' registration boards of all jurisdictions in Australia and New Zealand meet annually to discuss matters of common and mutual interest. Management, interpretation and consequences of the MRA and TTMRA are typically matters discussed at these meetings.

Is jurisdiction shopping and hopping occurring for occupations? If so, to what extent is it occurring and what are the costs (such as a 'race to the bottom') and benefits (such as regulatory competition and

innovation between jurisdictions)? What specific examples and other evidence do you have to support your arguments?

Jurisdiction hopping for optometrists within Australia is not a problem because the costs of registration are low and there are no other significant differences in registration procedures and requirements. The situation is not the same in regard to the TTMRA. There is considerable anecdotal evidence that optometrists wishing to practise in Australia but unable to migrate to Australia or become registered in Australia have sought or gained registration in New Zealand as a mechanism for gaining registration and entry into Australia.

A loophole existed until recent times whereby optometrists with membership of the British College of Optometrists could gain registration in New Zealand, bypassing the examination and accreditation processes that all other applicants for registration in Australia and New Zealand were required to undergo. This had several effects. British optometrists were able to become registered in Australia and New Zealand without any confirmation of their competence or the adequacy of their training while Australian and New Zealand optometry graduates and optometrists from every other country were required to demonstrate competency.

The second effect was that through EEU arrangements, optometrists from other European countries, in which standards of optometric practice were regarded as inadequate in Australia and New Zealand, could become members of the British College of Optometry, then gain registration in New Zealand, which entitled them to automatic registration in Australia.

The New Zealand legislation has been altered to require UK optometrists to undergo the same assessments as all other overseas applicants for registration. The decision has not been well received by some stakeholders, particularly by New Zealand employers who relied on a constant flow of optometrists from the UK. The New Zealand Government and the registration authorities have been under continuing pressure to provide special exemptions for UK optometrists.

Australian optometrist registration boards and the profession in general believe it would be a retrograde step if standards of care in Australia were to be affected by decisions made in New Zealand in an effort to address local workforce issues.

To allow New Zealand authorities to deal with their local problems without affecting standards of practice in Australia, Optometrists Association Australia suggests that the TTMRA arrangements as they affect optometry be amended so they apply only to only graduates of optometry schools accredited by the Optometry Council of Australia and New Zealand (OCANZ)¹ and optometrists who have passed examinations conducted for the purpose by the Optometry Council of Australia and New Zealand.

Are possible measures designed to prevent jurisdiction shopping and hopping affected by a lack of legal certainty? If so, how could this uncertainty be removed?

Would measures such as sufficient language proficiency, residency requirements or bonds reduce jurisdiction shopping and hopping? What would be their costs and benefits?

Impending national registration of health professions in Australia will eliminate jurisdiction shopping in this country.

¹ OCANZ is an independent organisation established to conduct assessments of optometrists trained outside of Australia and New Zealand and to accredit optometry courses and training in Australia and New Zealand.

Ministerial declarations — the future for mutual recognition?

What concerns do the ministerial declarations for vocationally-trained occupations address? Have the declarations been effective in addressing those concerns, and what are the costs and benefits compared to the previous approach to mutual recognition?

What are the costs and benefits of maintaining ministerial declarations over time? What institutional arrangements do you recommend to ensure the declarations remain up to date?

Ministerial declarations for vocationally trained occupations are not relevant to optometry.

Shift to national licensing

What are the costs and benefits of moving from mutual recognition to national licensing for registered occupations (other than health professions), and is there a net benefit from doing so?

Is there a case for some occupations to be subject to national licensing, but not others? Please specify and provide evidence, wherever possible.

To what extent do current occupation-registration arrangements hinder service provision across jurisdictional borders, despite the existence of mutual recognition? Does this warrant a shift to national licensing, or other reforms, and what would be the costs and benefits?

These matters are not relevant to optometry as national registration will apply to it.

Awareness, expertise and governance

Is a lack of awareness of mutual recognition obligations undermining the effectiveness of the MRA and TTMRA? If so, please provide specific examples and evidence. How significant is the problem, if at all?

Bearing in mind the effectiveness of past awareness-raising efforts, what do you recommend to address any awareness problems you have identified?

There appears to be an adequate understanding of the general principles of the MRA and TTMRA as they affect optometry among stakeholders.

To what extent do policy makers and regulators encounter difficulties in maintaining expertise on mutual recognition obligations? How, if at all, should this be addressed?

We have not seen any significant examples of policy makers and regulators encountering difficulties in maintaining expertise on mutual recognition obligations.

What reforms, if any, do you recommend to the governance arrangements for the MRA and TTMRA to improve their effectiveness? What would be the benefits and costs of your suggested reforms? How would they address concerns about maintaining regulator awareness of mutual recognition obligations?

To repeat our recommendation made above: To allow New Zealand authorities to deal with their local problems without affecting standards of practice in Australia, Optometrists Association Australia suggests that the TTMRA arrangements as they affect optometry be amended so they apply only to graduates of optometry schools accredited by the Optometry Council of Australia and New Zealand (OCANZ)² and optometrists who have passed examinations

² OCANZ is an independent organisation established to conduct assessments of optometrists trained outside of Australia and New Zealand and to accredit optometry courses and training in Australia and New Zealand.

conducted for the purpose by the Optometry Council of Australia and New Zealand.

Should regulatory decisions for goods be subject to similar appeal arrangements as those for occupations (including, for example, review by the Administrative Appeals Tribunal)?

There have been no decisions drawn to the attention of Optometrists Association Australia that have led the applicant to seek appeal mechanisms. This is not to say that such instances would not arise in the future. It would be reasonable for appeal processes to be in place and that they be similar to those for occupations.

Overseas models of mutual recognition

What features of overseas models of mutual recognition do you recommend be adopted to enhance the functioning of the MRA and TTMRA? What would be the costs and benefits of your recommendations?

We are not sufficiently familiar with overseas models of mutual recognition to be able to provide reasonable comment.

Bilateral engagement with third countries

What are the implications for the operation of the TTMRA of Australia and New Zealand's bilateral engagement with third countries? Are there any risks associated with the on-selling of goods imported from third countries to TTMRA partners?

Optometry is practised to standards comparable to those in Australia and New Zealand in very few countries and there would be little obvious motivation for those countries to form mutual recognition arrangements with Australia and New Zealand. The benefits of mutual recognition arrangements for Australia and New Zealand are also hard to see and most probably the effort in establishing and maintaining the arrangements would outweigh any benefits that would be derived.

Mutual recognition does not exist between jurisdictions within some of the countries in which standards of optometric practice are comparable to those in Australia and New Zealand (e.g. USA) further complicating the possibility of including these countries in TTMRA-type arrangements

We thank you for the opportunity to contribute to the review.

Yours sincerely,



JOE CHAKMAN
Executive Director