

## **Executive Summary**

The Dental Council appreciates the opportunity to submit on the Productivity Commission's review of the Trans Tasman Mutual Recognition Arrangement.

The Dental Council of New Zealand operates under the Health Practitioners Competence Assurance Act (HPCAA) 2003, and it regulates the professions of dentistry, dental hygiene, clinical dental technology, dental technology and dental therapy.

In response to your discussion document of the Trans Tasman Mutual Recognition Arrangement, the Dental Council makes the following points:-

- According to the HPCAA the Trans Tasman Mutual Recognition Act (TTMRA) 1997 prevails over the HPCAA, however Dental Council believes that the TTMRA does not reflect the modern aspects of the HPCAA in particular to competency requirements for registration, for example communication skills.
- The Dental Council rarely imposes conditions on people registering under mutual recognition;
- The Dental Council does not impose its standard pre-registration requirements under TTMRA;
- There are processes between the Dental Council and the Australian Dental Council to accredited programmes and standardise registration exams. However, more discussions are needed with the various Australian regulatory authorities to enhance TTMRA applications, for example; to avoid duplication of requesting Certificates of Good Standing;
- Jurisdiction shopping and hopping occurs for dental professions. The Dental Council is aware of an increase in TTMRA applicants which places an increased workload on Council. Council is particularly aware of New Zealand registrants applying for TTMR registration in Australia shortly after NZ registration;
- The lack of legal certainty undermines measures to prevent jurisdiction shopping and hopping;
- Dental Council believes that a language proficiency requirement should be consistent across all registration avenues i.e; HPCAA or TTMR;
- Dental Council suggests that work and/or residency requirements are areas that could be imposed to limit shopping and hopping;
- Bonding has also been suggested by some commentators as an option, however this will not work effectively in the New Zealand oral health care system as the majority of employment opportunities are privately based;
- The Dental Council recommends limiting the TTMRA to Australian and New Zealand graduates rather than to all registrants.

## **Introduction**

The Dental Council is responsible for regulating the professions of dentistry, dental hygiene, clinical dental technology, dental technology and dental therapy. Like the other 16 authorities regulating health practitioners in New Zealand, the Dental Council operates under the Health Practitioners Competence Assurance Act (HPCAA) 2003.

Section 158 of the HPCAA provides that the Trans-Tasman Mutual Recognition Act 1997 prevails over it. The Dental Council is therefore required to manage the significant and multi-faceted obligations imposed on it by the HPCAA and ensure the purpose of that Act is achieved, while at the same time accommodating the more singular requirements of the Trans-Tasman Mutual Recognition Arrangement. This may from time to time require reconciling conflicting obligations and policy objectives.

The Council's comments will primarily address the issues that your discussion document raises under "conditions and prerequisites" and "jurisdiction shopping and hopping" – where the issues of accommodating the two Acts is perhaps most evident. This letter lists specific questions (from your discussion document), followed by the Council's comments.

## **Submission**

### **Conditions and Pre-requisites**

#### **Question 4**

*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?*

The Dental Council rarely imposes any conditions on people registering under mutual recognition. This reflects the fact that, between Australia and New Zealand, at a non-specialist level, the professions/occupations that the Dental Council regulates are largely equivalent to those regulated in Australia. Conditions on registration would generally only be imposed, therefore, to reflect any existing conditions imposed on a TTMRA applicant by his/her Australian regulators. Exceptions to this exist, in that not all Australian states and territories regulate all five of the professions governed by the New Zealand Council.

Under the HPCAA the granting of registration and the issue of an annual practising certificate are separate. Once registered, circumstances may arise over the period of a practitioner's practice that requires the Council to consider placing conditions on a practitioner's practising certificate. These could relate to competence concerns, or to health issues that may require management.

In summary Council has not routinely needed to impose conditions to satisfy TTMRA, rather any conditions placed on a practitioner are to satisfy the HPCAA.

### **Question 5**

*Are occupation-registration bodies applying their pre-requisites 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?*

The Dental Council is not imposing its standard pre-registration requirements (for example, the need to have prescribed qualifications or to establish equivalence with those qualifications). TTMR registrants are deemed to have an equivalent qualification and, as for New Zealand graduates, the Council requires a health certificate, including Hepatitis B & C immune/clearance. Currently all TTMR applicants only need to provide Dental Council with a voluntary declaration, and proof of their qualification.

### **Possible Solution**

All registration bodies in New Zealand and Australia should apply the same prerequisites for all scopes of registration regardless of the scope in question. For example requesting a Certificate of Good Standing and proficiency in English should be a requirement for all applicants and should be consistent in all jurisdictions.

### **Jurisdiction Shopping and Hopping**

### **Question 6**

*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 Dental Council regularly meets with its counterpart Australian dental authorities and discussions cover areas of shared interest – such as the development of new specialties.

The Council has formed, with the Australian Dental Council (ADC), a joint accreditation committee, which uses the same standards to accredit programmes in both countries. This provides greater assurance that graduates of both countries receive equivalent education and preparation for practice. It needs to be recorded, however, that this does not provide similar assurance for TTMR registrants with non-Australian qualifications or New Zealand qualifications.

In both Australian and New Zealand, overseas-qualified practitioners without prescribed dental qualifications normally need to sit and pass an examination – comprising written and clinical components. The New Zealand Dental Registration Examination (NZDREX) comprises of an Overseas Trained Dentists Preliminary (OTDP) Examination and a Clinical Examination. The OTPE examination is a joint examination with the Australian Dental Council which brings standardisation to both countries.

Clearly, both the Dental Council and the ADC must continue to ensure that the level of assessment through the country-specific clinical examination is at a consistent and agreed level. This is done by New Zealand and Australian representation on both country's examination and yearly meetings of the Examination Directors of both the DCNZ and ADC. However, the ADC is currently reviewing their exam process and the DCNZ has a representative on the ADC Assessment Review panel which will ensure harmonisation of the

assessment processes. DCNZ do not have any records of how many examination attempts a candidate has sat on the ADC clinical exam before attempting to sit the NZ exam.

The Dental Council is also represented in the association of authorities (which are separate in Australia from the Dentist Boards) regulating dental technicians and clinical dental technology. This association operates under the banner Council of Regulating Authorities (or CORA). For dental technology, registration is achieved by completing a prescribed course of training or by passing a prescribed examination (in New Zealand this is the New Zealand Dental Technicians Registration Examination (NZDTechREX)). In 2006 it was agreed that a uniform registration examination for dental technicians and clinical dental technicians would be developed for Australia and New Zealand. At the last CORA annual general meeting September 2007 the examination process was finalised and the first CORA registration examination was held in New Zealand at Otago University in February 2008. The examination will circulate around Australia and New Zealand.

Again, the test of this initiative will be in whether those seeking registration as a result meet the standards of the registering authority. It remains a concern to the Dental Council that applicants for the dental technician examination, when undertaken in Queensland do not need to meet an English language standard. Under the TTMR applicants applying for New Zealand registration are not required to produce any evidence for English language competence. Registration under the HPCAA requires a level of communication competence and registration under TTMRA should reflect this.

At an administrative level, more discussion and negotiation is required between the registration bodies to reduce duplication in processing registrations. One example relates to requests for Certificates of Good Standing (COGS). When a NZ-registered practitioner wants to register and practice in Australia, the Australian application form package will ask for COGS. About a month later, an Australian board will again fax a COGS request to the Dental Council as part of the scrutiny process. It is not clear to the Dental Council what processes within Australian boards relate to the TTMRA and what are more "in-house" procedures. Ongoing liaison should clarify this and also reduce the number of COGS requests from Australia. For the period January 2007 to July 2008 the Dental Council issued 155 TTMR COGS requests.

**Recommendations:** Australian boards should use [www.dcnz.org.nz](http://www.dcnz.org.nz) "Locate a Practitioner" link for preliminary and pre-registration purposes as all the *relevant information including conditions of practice is uploaded on the Dental Council website* and is updated regularly.

### Question 7

*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?*

The Dental Council is aware of an increase in the TTMRA applications and the workload for the DCNZ. More than often, candidates who do not gain registration in an Australian state or territory initially, apply to New Zealand (through the individual assessment process, exams etc). After they obtain New Zealand registration, the candidate applies for Australian registration under the TTMRA.

Australian authorities will be better placed than the Dental Council to comment on the numbers of applications they get from New Zealand via this route.

There are a number of possible reasons for Dentists pursuing a New Zealand examination route:

- The examination fee is lower in New Zealand compared to Australia.
- The exam is two days shorter in New Zealand than Australia.
- For the New Zealand examination currently there is no waiting time however Australia may want to comment on their waiting time.
- The priority 9 (ADC transferring candidates) policy for the clinical exam is no longer effective as candidates are now able to get into the clinical exam. This priority includes a pass in English language (7.5) and preliminary pass.

**Note:** That the Dental Council accepts Australian dental applicants to sit the clinical examination, but Australia does not accept New Zealand candidates for their clinical examination even though a candidate had passed the joint written exam. This may result in a review of the number of applicants sitting the New Zealand examination.

However, the reality remains that practitioners do move from one country to the other – and often do so shortly after registration. During the period 1 April 2007 to 31 March 2008 some 114 New Zealand applicants applied for registration under the TTMRA. Of these, 74 were Dentists, 14 Hygienists, 10 Therapists, 3 for Examinations and 13 were new Graduates. This may be having a negative impact on the New Zealand work force and a concern that New Zealand does not retain a high portion of its registrants.

According to the 2006 Workforce Analysis report, from 1992 to 2006, 44 (16.5%) dentists of the total 267 NZDREX dentists did not have an Annual Practicing Certificate (APC) in 2006. Almost two-thirds of those non-APC practitioners are registered in Australia. At the time of preparing this submission the current 2007 Workforce Survey details were not available for publication however, these can be provided at a later date if required.

A proposed outcome of this Review would be to allow New Zealand and Australian authorities to place a condition on all non-TTMRA and non-prescribed registrants to work for a minimum of 12 months in either New Zealand or Australia prior to being granted eligibility under the TTMRA. This does not prevent subsequent movement to another jurisdiction if the applicant is already a resident of New Zealand or Australia.

Similarly a residency requirement is another option to reduce jurisdiction shopping and hopping where eligibility would be applicable after 12 months from date of residence being granted. However, from the Dental Council's perspective, this option might be difficult to implement and monitor. The residency condition may require constant communication with the Immigration Service in order to assess the applicant's status. Currently there are no provisions in place that allow Council to communicate with the Immigration Service on such matters. Dental Council is currently deliberating with the NZ Immigration Service in reviewing some of its processes and in finding a possible solution to reducing the duplication of processes between the DCNZ and the Immigration Service.

These initiatives may reduce the number of applicants shopping and hopping and in turn will allow New Zealand to build on retaining migrants to the NZ workforce.

### **Question 8**

*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?*

Yes, Dental Council believes there is absolutely a lack of legal certainty and this undermines the aim of preventing jurisdiction shopping and hopping and this area needs to be investigated further.

Section 158 of the Health Practitioners Competence Assurance Act 2003 (HPCAA) simply states that the TTMRA prevails over the HPCAA. Yet, the HPCAA, which followed the TTMRA some 6 years later, introduced a comprehensive and modern scheme for registration that charged the New Zealand authorities with applying a considered, principle-based approach to registration decisions. The Council believes that more thought needs to be given to whether the TTMRA as it currently stands entirely reconciles with the modern, stringent requirements and public-safety focus of the HPCAA.

### **Question 9**

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

DCNZ believes that such measures are worthwhile and should be consistent over both countries, but do not believe it will reduce the shopping and hopping between jurisdictions but it would result in harmonisation of TTMRA and HPCAA legislation and improve stability of a workforce.

Bonding has been suggested by some commentators as an option. However, this would be impractical to most oral health practitioners, the majority of which are in private practices in New Zealand. In general Council believes bonding would be difficult to enforce.

There is one recommendation that the Council does wish to propose for consideration and further debate. That is, that the TTMRA be limited to Australia and New Zealand graduates rather than all registrants. This is in line with most Mutual Recognition schemes and would support the existing joint initiatives of the Australian and New Zealand Councils, without compromising the opportunity for non-Australasia-trained practitioners to seek registration through the examinations process. For this to be equitable, the Australian and New Zealand Councils would need to ensure that as far as possible the examination-based pathways in both countries are compatible and at a similar level. The Council is confident that the history of engagement between the two countries' Councils demonstrates that such consistency can be achieved.