



Te Kaunihera Tapuhi o Aotearoa
Nursing Council of New Zealand

23 July 2008

Mutual Recognition Review
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Review of Mutual Recognition Schemes

I am pleased to provide the following submission for the Nursing Council of New Zealand. The Nursing Council does not wish to submit on all the issues raised in your Issues paper, and would like to submit on issues not raised in that paper but which it considers relevant to the study's terms of reference.

Should the character checks required for some occupations continue to be not mutually recognised across Australian jurisdictions and with New Zealand?

The Nursing Council is of the view that character checks or certificates of good standing should be required to be carried out individually by each jurisdiction. Section 19 of the (New Zealand) Trans Tasman Mutual Recognition Act 1997 ("TTMR Act") currently provides for information to be provided with an application as to whether a nurse

- (a) is the subject of any preliminary investigations or action that might lead to disciplinary proceedings in any participation jurisdiction
- (b) is the subject of any disciplinary proceedings
- (c) has had his or her registration cancelled or suspended as a result of disciplinary action
- (d) is not prohibited from practising or subject to any special conditions in practising as a result of criminal, civil or disciplinary proceedings
- (e) specify any special conditions to which the applicant is subject in practising
- (f) give consent to the making of inquiries of and the exchange of information with the authority regarding the applicant's activities or otherwise regarding matters relevant to the notice.

It is under this section that the Nursing Council of New Zealand requires the Australian registering authority to provide a declaration that the nurse is in good standing. This provides the Council with an assurance that an Australian authority has not received a notification of a health condition or a concern about competence that might impact on public safety. Some jurisdictions in Australia do not have competence or health provisions in their Acts but will in all likelihood have these provisions in the future. Mutual recognition legislation must allow authorities to ensure that applicants for registration are competent and fit to practice.

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?

There is no evidence available to the Nursing Council that other Nursing Registration boards are assessing the equivalence of occupations in markedly different ways. The registration authorities in New Zealand and Australian states have a close working relationship.

Are appeal mechanisms for the mutual recognition of registered occupations effective?

Applicants for registration not utilizing the TTMR Act have processes available under the HPCA Act that are easier to access than appealing to an outside Tribunal in the first instance. These include a review by a Registration Committee or the whole Council before an appeal to the District Court is required.

How often do occupation-registration bodies impose conditions on people registering under mutual recognition?

The New Zealand Nursing Council, on occasions, includes conditions in a nurse's scope of practice to align the registrant with New Zealand scope of practice requirements or occupational equivalence. The conditions most commonly imposed are conditions that a nurse may only work in general or obstetric nursing or in the area of mental health. The Council may also require a registrant to maintain any conditions imposed by its Australian counterpart.

Are occupation-registration bodies applying pre-requisites for initial registration to people seeking registration under mutual recognition?

The Council does not impose their initial registration pre-requisites on applicants as it has confidence in the qualifications and training standards in Australian jurisdictions.

Areas in which discussion and negotiation between registration bodies have made mutual recognition of occupations possible.

The Nursing Council has regular meetings with Australian regulatory authorities through ANMC and has achieved harmonization of registration.

Is jurisdiction shopping and hopping occurring for occupations,

The Council is not aware of jurisdiction hopping and shopping and is of the view that consistency across the jurisdictions has made this unlikely. It is important to ensure that there is consistency in minimum language proficiency. The Health Practitioners Competence Assurance Act requires the Council to ensure that an applicant for registration is able to communicate effectively for the purposes of practising nursing and his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public. The Council is of the view that the Health Practitioner Competence Assurance Act does not permit the implementation of measures such as bonds or residency requirements.

Jurisdiction hopping- where suspension or conditions imposed for reasons other than disciplinary action.

The Council does wish to address issues around moving from one jurisdiction to another, after registration, if conditions resulting from a competence review or health issues have been imposed. The current provisions of the TTMR Act permit suspension or cancellation or the imposition of conditions on disciplinary grounds or as a result of or in anticipation of criminal, civil or disciplinary proceedings (section 32).

The majority of suspensions or conditions imposed in New Zealand, in the interests of public safety, are for nurses who have been the subject of a competence review or who have been found by a health committee to have a health condition that means they are unable to practice. Council understands that it is likely under the proposed National Registration and Accreditation Scheme that there will be competency and health provisions in Australian legislation. The concern of Council is that nurses who are registered in both countries but who have been suspended or had conditions imposed for health or competence reasons in one jurisdiction will move to the other jurisdiction and be able to practise.

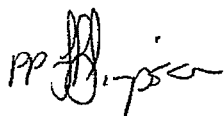
Furnishing information

Under section 33 of the TTMR Act the Council must furnish any information reasonably required by the equivalent authority in connection with actual or possible disciplinary action. This provision applies notwithstanding any law of New Zealand relating to secrecy or confidentiality. The problem with this provision is that it allows the local registration authority to provide that information **only** on request from the equivalent authority but does not appear to allow the provision of that information without such a request. It also confines the information to information about disciplinary action as opposed to health or competence concerns.

The Nursing Council in its role in monitoring nurses with a health condition is regarded as a health agency for the purposes of the Health Information Privacy Code. There are constraints imposed on the Council under that code. Nothing in this code or Privacy legislation derogates from any provision that is contained in any enactment that authorises or requires personal information to be made available.

The issue is that the TTMR Act does not currently authorise or require information to be provided about health or competence concerns. We feel that these provisions should

be strengthened so that the information can be legally be volunteered to all Australian jurisdictions and vice versa.

A handwritten signature in black ink, appearing to read 'PP Prendergast', written in a cursive style.

Clare Prendergast
Legal Adviser