

Osteopathic Society of New Zealand (OSNZ)

The OSNZ would like to make comment on the draft findings and recommendations as detailed in the draft review. The OSNZ put forward a submission for the 5-year review of the TTMRA and is following this with comments to the draft review.

The OSNZ has focused its comments on the areas of the legislation and review that have a direct influence on the Osteopathic profession New Zealand and Australia.

Draft findings and recommendations

DRAFT FINDING 4.1

The Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement appear to have met their main objectives of increasing the mobility of goods and labour around Australia and across the Tasman:

- In the goods area, the limited evidence available suggests that Mutual Recognition has led to lower regulatory compliance costs for firms, and has contributed to the expansion of interstate and trans-Tasman trade. However, it has not been possible to quantify the effects of mutual recognition in isolation from other factors.*
- Increased labour mobility and reduced wage dispersion are consistent with the expected effects of mutual recognition of occupational registration.*

Comment

Since the Osteopathic profession in New Zealand became statutorily regulated (September 2004) the OSNZ has noted the easier movement of Osteopaths between New Zealand and Australia.

Previous to September 2004 anecdotal evidence suggested that there was both less movement of the profession between New Zealand and Australia, and that what movement there was involved a higher cost and was lengthy in its process.

Anecdotal evidence from those Osteopaths utilizing TTMRA to move between the two countries supports the view that the process is straightforward and clear.

The OSNZ is not aware that since September 2004 there has been any influence on wage parity between the two countries.

DRAFT RECOMMENDATION 5.1

Registration approaches should be reviewed to determine whether 'traditional' registration is the appropriate response to perceived risks to the public or the environment, with a view to reducing the costs of registration where possible and making the approach of all jurisdictions more consistent.

Comment

The OSNZ is of the view that where possible a reduction in registration costs, and consistency in the requirements made of a profession to maintain standards, ensure professional development, and provide safe and competent practice to the public should be sought.

The OSNZ holds the view that possible changes to registration must ensure public safety is not compromised.

For the Osteopathic profession the equality between the New Zealand and Australian training should support a wider Trans Tasman registration process.

DRAFT FINDING 5.1

In contrast with the predominant view among stakeholders, co-regulation arrangements appear likely to fall within the coverage of the mutual recognition schemes if the elements required for mutual recognition (authorisation under legislation conferred by a local registration authority) are present.

DRAFT RECOMMENDATION 5.2

The jurisdictions should consider whether the current wording of the mutual recognition legislation reflects their intentions regarding the types of registration covered by the schemes.

DRAFT FINDING 5.2

Although many study participants have raised concerns about variations in occupational standards between jurisdictions, there is very little evidence of harm stemming from these variations.

The Commission would appreciate evidence that either refutes or supports this statement.

Comment

The OSNZ supports the Draft Finding 5.2

Anecdotal evidence from both the members of the OSNZ and the wider profession would not suggest there is any dramatic variation in professional standards between jurisdictions.

In the last 15 years all official complaints by the public about OSNZ members have not shown any geographical, educational, or jurisdictional focus. Whilst the OSNZ is aware there are some professional variations relating to geographical, educational and jurisdictional origins there has never been any suggestion or evidence that this has resulted in harm to the public.

The OSNZ in fact supports these variations as being integral aspects to a broad and competent Osteopathic profession.

DRAFT RECOMMENDATION 5.3

The mechanisms through which the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal can be approached to make a declaration on occupational standards should be clarified.

DRAFT FINDING 5.3

An effective process for resolving regulator concerns about significant variations in occupational standards across jurisdictions is required. Potential options include advisory opinions from a Tribunal and a temporary exemption mechanism.

Study participants' views on what an effective process might comprise, including a description of the potential costs and benefits of any proposals, would be appreciated.

DRAFT RECOMMENDATION 5.4

The mutual recognition legislation should be amended to allow criminal record checks. Any amendment would need to be qualified to ensure checks did not unduly slow registration processes.

Feedback on potential approaches to dealing with regulator concerns about criminal record checks would be appreciated.

Comment

The OSNZ is supportive of ensuring criminal check can be completed in an effective manner, to slow down a registration process would be unhelpful to the overall ease of movement of professionals.

DRAFT RECOMMENDATION 5.5

The mutual recognition legislation should be amended to make clear the types of condition that registration authorities can impose at the time of registration.

DRAFT FINDING 5.4

Differences between jurisdictions in the scope of activities covered by licenses have the potential to impede mutual recognition and labour mobility. By clarifying equivalence between licenses, Ministerial Declarations have gone some way towards resolving this problem. However, agreement on national licensing categories is required to address the potential impediments to labour mobility associated with inter-jurisdictional license variations.

Comment

The OSNZ is aware of inter-jurisdictional variations and is fully supportive of registering bodies having the ability to modify the scope of a license to account for this.

The OSNZ is of the view that this possible license modification helps ensure public safety whilst still supporting the ability of a varied profession to move from one jurisdiction to another.

DRAFT FINDING 5.5

Legal advice indicates that people who register under mutual recognition can probably not be required to undertake training while holding that registration.

DRAFT RECOMMENDATION 5.6

The mutual recognition legislation should be amended to make it clear that ongoing conditions or requirements for further training and ongoing professional development apply equally to all registered persons within an occupation, including those registered under mutual recognition.

Comment

The OSNZ supports governance changes that encourage continuing professional development, this then promoting a competent and safe profession.

DRAFT RECOMMENDATION 5.7

The mutual recognition legislation should be amended to define undertakings and provide that they are transferable between jurisdictions.

Comment

The OSNZ supports this statement.

DRAFT RECOMMENDATION 5.8

The mutual recognition legislation should be amended to ensure that information on non-disciplinary or remedial action can be shared between jurisdictions.

Comment

The OSNZ supports this proposed change.

DRAFT FINDING 5.6

Some Australian regulations constrain provision of services to people with very specific characteristics — for example, membership of one Australian professional body. This approach has the potential to create registered occupations in the meaning of mutual recognition.

DRAFT FINDING 5.7

Unilateral modification of licence categories or customising of equivalence conditions defeats the purpose of Ministerial Declarations.

DRAFT RECOMMENDATION 5.9

Consideration should be given to extending the Ministerial declarations to occupations regulated in New Zealand.

DRAFT RECOMMENDATION 5.10

Relevant New Zealand regulators should be included in consultations around the development of national licensing systems in Australia.

Comment

The OSNZ holds the opinion that, given the ease of movement of professions under TTMRA, consultation is essential in the development of national licensing systems in Australia.

The Osteopathic profession in Australia is currently changing from federal licensing to national licensing; this process obviously has a large number of potential issues that may affect both the Australian and the New Zealand professions.

The OSNZ has been and continues to be in close contact with the Australian Osteopathic Association to follow the development of this process, with a view to how this may or may not impact the utilization of the TTMRA by Australian Osteopaths wishing to obtain registration in New Zealand.

If the national registration process within Australia moves too far away from the criteria required to gain and maintain registration within New Zealand this may cause difficulties with the movement of the profession between the two countries.

Full consultation during the development of national licensing systems would help protect against possible negative impacts during the implementation of these changes.

DRAFT RECOMMENDATION 6.1

The foreshadowed new Australian consumer product safety regime should include provisions to ensure it is closely integrated with the temporary exemption processes under the MRA and TTMRA. In particular, the new consumer law should ensure that:

- when an interim product ban is imposed on a good under Australia's new consumer product safety regime, the temporary exemption process under the MRA should be set aside in order to avoid duplication and inconsistency between the two processes*
- when an interim product ban is imposed by any Australian jurisdiction, the temporary exemption process under the TTMRA is automatically invoked and the resultant temporary exemption is automatically revoked when the interim product ban ends*
- if and when an interim product ban within Australia is resolved by a national permanent ban or new national standard, a national temporary exemption under the TTMRA is automatically invoked for Australia.*

DRAFT RECOMMENDATION 7.1

Following completion of the five year work plan for industrial chemicals in 2009, Australian and New Zealand Governments should consider converting the TTMRA special exemption for hazardous substances, industrial chemicals and dangerous goods into a permanent exemption. This should involve a cost-benefit analysis, based on a realistic assessment of the likelihood of achieving mutual recognition or harmonisation in the foreseeable future, given the slow progress to date.

DRAFT RECOMMENDATION 7.2

The special exemption for therapeutic goods should continue until a joint regulatory regime can be achieved. The Australian and New Zealand Governments should resume negotiations to establish a joint regulatory scheme for therapeutic products, and a joint agency to oversee the scheme, as soon as feasible after the 2008 New Zealand national election.

Comment

A percentage of the Osteopathic profession supplies and suggests that their patients incorporate the use of therapeutic goods in their healthcare regime. Whilst the OSNZ supports the harmonisation of regulation of these goods between New Zealand and Australia, it also supports the ability of the consumer to obtain a wide range of therapeutic products.

DRAFT RECOMMENDATION 7.3

The special exemption for road vehicles should remain in place due to the long-term prospects for harmonisation. Ongoing dialogue between the respective regulator is necessary to ensure emerging differences in standards are resolved and that the mutual recognition of compliance certification progresses.

DRAFT FINDING 7.1

The Commission notes the progress made by the Australian and New Zealand Governments towards harmonised regulations for natural gas appliances. It supports the move towards a permanent exemption for LPG appliances, subject to a cost-benefit analysis of the change.

DRAFT RECOMMENDATION 7.4

Because of the different historical paths of Australian and New Zealand spectrum allocation and use, a permanent exemption should be considered for short-range and spread-spectrum devices, once opportunities for harmonisation are exhausted. Special exemptions should remain where there remains a possibility of harmonisation of spectrum allocation, including for the High Frequency Citizen Band, in-shore boating devices and Digital Electrical Cordless Telephones.

Devices likely to become obsolete in the near future should also remain as special exemptions until the exemption is no longer needed.

DRAFT RECOMMENDATION 7.5

The TTMRA legislation should be amended so that special exemptions can have a maximum duration of three years, and can be extended for one or more further periods, each not exceeding three years. This reform should be reflected in the administrative procedures that governments use when considering special exemption rollovers, including that cooperation reports only need to be prepared every three years.

DRAFT RECOMMENDATION 8.1

Consideration should be given to narrowing the permanent exemption for risk-foods from the TTMRA to include only those for which harmonisation of risk-food lists and equivalence of import-control measures are not achievable in the long term. All other risk-foods should be reclassified as a special exemption, with efforts to achieve equivalence of import-control systems and third-country arrangements to be continued through a cooperation program, undertaken by a Trans-Tasman working group, consisting of regulatory body and policy officials.

DRAFT RECOMMENDATION 8.2

The permanent exemption for ozone protection legislation should be removed from the MRA. Governments should also consider removing the ozone protection exemption from the TTMRA, subject to both countries aligning their respective regulatory systems while ensuring consistency with international obligations.

DRAFT RECOMMENDATION 8.3

A new provision should be included in the Trans-Tasman Mutual Recognition Acts which would allow, through regulation, exempted legislation to be moved from Schedule 2 (permanent exemptions) to Schedule 3 (special exemptions).

Comment

The OSNZ supports this recommendation

DRAFT FINDING 8.1

The exceptions for goods in the mutual recognition Acts covering regulations relating to the manner of sale of goods do not operate consistently or clearly. The need to comply with varying requirements across jurisdictions in these areas has the potential to create unnecessary barriers to the sale of goods.

The Commission would welcome examples of impediments to the sale of goods stemming from the exceptions to the mutual recognition Acts.

DRAFT FINDING 8.2

The mutual recognition Acts could include in the scope of mutual recognition those requirements relating to:

- *the persons to whom goods may or may not be sold*
- *the circumstances in which goods may or may not be sold*
- *transport, storage and handling of goods*
- *inspections of goods.*

Mutual recognition would continue not to apply where it could reasonably be expected to expose persons in the other jurisdiction to a real threat to health or safety, or could reasonably be expected to cause significant environmental harm. Exceptions would be retained for the contractual aspects of the sale of goods; the registration of sellers or other persons carrying on occupations; and the requirement for business franchise licences.

The Commission seeks views regarding the potential costs and benefits of this proposal.

DRAFT FINDING 8.3

Provisions in the mutual recognition Acts for requirements that do not need to be complied with' for goods, do not currently extend to use-of-goods requirements in other jurisdictions. Their omission from mutual recognition has the potential to unnecessarily impede the sale of goods across jurisdictions.

DRAFT FINDING 8.4

The mutual recognition Acts could state that requirements relating to the use of goods do not need to be complied with, insofar as they prevent or restrict, or have the effect of preventing or restricting the sale of goods. An exception could be made where mutual recognition could reasonably be expected to expose persons in the other state to a real threat to health or safety or cause significant harm to the environment.

The Commission seeks views on the potential costs and benefits of implementing this proposal.

DRAFT FINDING 8.5

The mutual recognition Acts do not provide an adequate mechanism for sellers of goods to challenge a use-of-goods requirement that prevents or restricts the sale of goods (or has the effect of doing so) in another jurisdiction.

DRAFT FINDING 8.6

An effective, accessible administrative mechanism could be made available to sellers of goods, regulators and other interested parties to obtain information and guidance on the application of the mutual recognition legislation to individual cases, and to assist in the resolution of disputes.

DRAFT FINDING 8.7

A judicial mechanism could be made available for sellers of goods and other interested parties to:

- obtain advisory opinions from a body such as the Administrative Appeals Tribunal*
- appeal regulator decisions to enforce requirements where the parties believe mutual recognition should apply.*

The existing mechanism for referral of standards issues to COAG Ministerial Councils could be extended to all issues of significant dispute relating to goods.

The Commission seeks views regarding the potential costs and benefits of implementing these options.

DRAFT FINDING 9.1

The permanent exemption for medical practitioners could become a special exemption. Harmonisation of competency standards for overseas-trained medical practitioners could then be pursued through a cooperation program.

The Commission would appreciate feedback on the desirability, and potential costs and benefits, of this move.

DRAFT FINDING 9.2

The mutual recognition legislation could be amended to ensure that mutual recognition is available to people registered under schemes in which registration is not compulsory for all practitioners, provided those schemes meet the other requirements for registration specified under the mutual recognition legislation.

Comment

The OSNZ does not support this possible amendment.

DRAFT FINDING 10.1

The US-Australia Free Trade Agreement and the New Zealand-China Free Trade Agreement do not significantly increase the risk to consumers of lower quality products or registered persons with lower qualifications entering New Zealand or Australia under the Trans-Tasman Mutual Recognition Arrangement.

DRAFT FINDING 10.2

The free trade agreements include commitments by the free trade agreement partners to engage in further cooperation, recognition and harmonisation agreements that may create opportunities and may pose risks for a mutual recognition partner:

- *The opportunities arise if the recognition or harmonisation is extended to the mutual recognition partner by the cooperation agreement or if the agreement provides a platform for discussions between the mutual recognition partner and the third country.*
- *The risks arise if the free trade provisions or a related cooperation agreement result in lower quality goods being sold or less qualified persons carrying on occupations in the free trade partner and subsequently in the mutual recognition partner.*

DRAFT FINDING 10.3

It is important that Australia and New Zealand continue to take into account the possible impacts that free trade agreements and the related cooperation agreements will have on the mutual recognition framework when negotiating future initiatives with third countries.

DRAFT FINDING 10.4

Recent trans-Tasman agreements may provide alternative approaches for improving the operation of mutual recognition. The new agreements are more narrowly focused than the mutual recognition schemes, but they increase the scope of mutual recognition to new areas of the economy and strengthen trans-Tasman enforcement and dispute resolution. It is important to consider these alternative, targeted approaches along with other options when modifying the mutual recognition schemes.

Comment

The OSNZ supports this statement. Easier, financially viable movement between countries, supports growth and development of both professions and economies.

DRAFT RECOMMENDATION 11.1

COAG should strengthen its oversight of the mutual recognition schemes by appointing two specialist units — one for goods and the other for occupations — to monitor and provide advice on the operation of the schemes within Australia.

Comment

The OSNZ strongly supports this proposal, believing that both goods and occupations would be served more effectively if this were to be developed.

The functions of the two units should include:

- *advising COAG, regulators and the public on technical aspects of the schemes*
- *providing a 'complaints-box' service that enables the public to alert COAG about problems with the schemes' operation, and to facilitate greater use of existing appeals mechanisms by the public and the referral process by COAG when disputes cannot be resolved through mediation by the specialist units*
- *raising public awareness and regulator expertise on the schemes. This should include the provision of separate users' guides for the public and regulators, a website, and seminars targeted at relevant industry associations, professional associations, trade unions, policy makers and regulators*
- *administering an internet-based practical test that relevant officials in regulatory agencies would have to undertake annually to confirm they have sufficient expertise to administer the mutual recognition schemes*
- *for the occupations unit, facilitate regulators' annual updating of the Ministerial Declarations of occupational equivalence.*

The administrative arrangements for the two units should be as follows:

- *both units should be under the direction of COAG's Cross-Jurisdictional Review Forum*
- *the goods unit should be located in the Commonwealth Department of Innovation, Industry, Science and Research*
- *the occupations unit should be located in the Commonwealth Department of Education, Employment and Workplace Relations.*

Comment

The OSNZ strongly supports the proposed functions of the two units.

DRAFT RECOMMENDATION 11.2

Occupation-registration authorities should be required to report annually on their administration of the mutual recognition schemes. This should include data on the number registered under mutual recognition, compared with total registrations, and information about complaints and appeals. Such reports should be provided to the specialist occupations unit mentioned in draft recommendation 11.1.

Comment

The OSNZ supports this recommendation. At the present time the only way the OSNZ could gather this information would be to request it from the Osteopathic Council of New Zealand, who is under an obligation to collect, collate and make available such data.

The OSNZ would like more transparency as to the use of the TTMRA for the New Zealand and Australian professions

DRAFT RECOMMENDATION 11.3

The Cross-Jurisdictional Review Forum should report annually to COAG on its work program and achievements. This reporting should be done through COAG's Senior Officials' Group.

DRAFT FINDING 12.1

The state and territory jurisdictions should consider ways to make amending the mutual recognition legislation more flexible. The legislative mechanisms to amend the state Mutual Recognition Acts and the Trans-Tasman Mutual Recognition Acts could allow the Commonwealth to amend the legislation with approval from the jurisdictions.