



SUBMISSION TO

THE AUSTRALIAN PRODUCTIVITY COMMISSION

**Review of
Mutual Recognition
(TTMRA & MRA)**

March 2003

Executive Summary

Since the early 1980's the Australian and New Zealand Governments have been working towards a complete liberalisation of trade between the two countries. Since the inception in 1983, of the Australian New Zealand Closer Economic Relations Trade Agreement (known as ANZCERTA or the CER Agreement), a number of changes have taken place to broaden and deepen economic relations between New Zealand and Australia. The establishment of a Trans-Tasman Mutual Recognition Arrangement after the 1992 review of the CER is natural extension of the CER.

Occupational registration and the portability of skills are central to the work of the Department of Education, Science and Training (DEST). Through the AEI National Office of Overseas Skills Recognition (AEI-NOOSR), DEST supports the Government's Skilled Migration programme and provides a coherent framework for qualifications recognition in collaboration with professional associations and other industry partners. AEI-NOOSR also promotes the internationalisation of Australia's education, science and training through bilateral and multilateral qualifications recognition arrangements. It should be noted however that AEI-NOOSR does not have carriage of the TTMRA legislation as it pertains to occupations as that power lies with the States and Territories through Registration Boards.

The requirement that overseas-trained professionals register for professional practice can be met in two ways: assessment by the Australian assessing authority leading to registration by the State or Territory; or registration invoked under the mutual recognition and Trans Tasman arrangements. DEST notes that the mutual recognition principle provides a key recognition pathway for the overseas-trained seeking skills recognition in Australia.

The recognition of occupations across State and Territory bodies is also an important issue for the Vocational Education and Training (VET) Group within DEST. VET Group works closely with the Australian National Training Authority (ANTA) to address licensing and regulatory issues that impede the freedom of trade and mobility of the workforce. DEST's understanding is that ANTA will forward a submission to the Productivity Commission regarding industry licensing and regulatory issues relating to the MRA. While this submission identifies the importance to DEST of the portability of VET qualifications, the main focus of the discussion will be on issues relating specifically to the TTMRA:

- the implementation of the TTMRA vis-à-vis the intended benefits relating to professional occupations and the regulatory practices of the professions;
- unintended consequences of the TTMRA;
- the effect of delayed enactment of appropriate State legislation and partial registration across Australian jurisdictions in some professions; and
- data collected on registrations under TTMRA.

DEST strongly supports the mutual recognition principle and in particular the principle that recognition under the TTMRA focuses on the fact of a person's registration in their original jurisdiction rather than on the requirements for registration (eg the possession of a qualification).¹ There is no doubt that the TTMRA assists in overcoming differences between jurisdictions and significantly streamlines the registration process for the majority of New Zealand registrants seeking to practise their profession in Australia.

In addition the TTMRA has resulted in greater harmonization between some Australian and New Zealand counterpart bodies. However, there are also some instances of dissatisfaction with the

¹ Council of Australian Governments (COAG) Committee on Regulatory Reforms, *A User's Guide to the TTMRA Mutual Recognition Arrangement* P.13, Section 2.2

operation of the Arrangement in some professions and cases where individuals trained in a third country have not been able to invoke their right to registration.

In summary, from DEST's observations of the operation of the TTMRA and from the available information provided by State Registration Boards, the TTMRA has made some impact in improving the portability of qualifications & access to registration & employment opportunities for New Zealanders. However, the proportion of registrants entering the Australian workforce under the TTMRA is not balanced across the range of professions

This submission advocates caution in broadening the scope of the TTMRA until a reliable picture, based on valid data, can be built as to how the TTMRA is being used. Considering that the TTMRA represents the only treaty level agreement on professional recognition matters that Australia has with another country, Australia would do well to first ensure that it is used in the spirit of the intent of the original legislation –i.e. that it provides wider opportunities for Australians and New Zealanders to work in each others' countries. AEI-NOOSR is strongly of the view that there is a need for consultation with the relevant professional bodies in considering any expansion of the TTMRA.

Recommendations of the DEST submission are:

1. That awareness of all stakeholders be raised regarding the nature of the TTMR legislation and the responsibilities the States have under this legislation. In particular that:
 - shortcomings relating to occupational registration authorities in all jurisdictions in facilitating the operation of the TTMRA are addressed, and
 - an updated user's guide is prepared for prospective registrants regarding the operation of the Arrangement.
2. That the review consider the introduction of a minimum period of New Zealand professional practice to alleviate concerns that some professionals trained in a third country are using the TTMRA to gain permanent Australian residency, instead of going through the usual assessment processes for overseas professionals wanting to work in Australia.
3. That consideration be given to bringing the formal mechanisms of appeal within the reach of smaller professions, where the discussions with trans-Tasman counterparts do not resolve areas of difference.
4. That consideration be given to appropriate incentives and / or penalties where the intent of the legislation is frustrated by a Registration board or body denying registration in an occupation under the TTMRA.
5. That in order to be able to monitor the efficacy of the arrangement effectively and to enable accurate evaluation and measurement, a holistic set of data is collected by all State Registration boards relating to the country of training of New Zealand registrants as well as the period of registration in New Zealand.
6. That caution be exercised in expanding the scope of the TTMRA until consideration has been given to the unintended consequences of some clauses and until appropriate consultation with the professional bodies has occurred.

1. Introduction

Knowledge and skills are universally accepted as being central to economic growth and competitiveness. Governments of all jurisdictions represented under the mutual recognition arrangements demonstrate a commitment to a mobile and flexible workforce responding to education, training and industry needs to deliver these skills. Mutual recognition contributes substantially to the portability of skills and transparency of the recognition processes, thereby enhancing labour market outcomes.

In late 1992, the Commonwealth Parliament passed the *Mutual Recognition Act* in order to remove artificial barriers to interstate trade in goods and in the mobility of labour caused by different regulatory requirements among the Australian States and Territories. Contained in the MRA was a provision to "... review in due course with New Zealand the potential benefits, consistent with [the CER Agreement] . of participation by New Zealand in a scheme implementing mutual recognition principles".¹ In 1996 the Commonwealth, States and Territories and New Zealand signed the Arrangement establishing the Trans Tasman Mutual Recognition Arrangement (TTMRA). The TTMRA is a natural extension of the CER and builds on the 1992 Mutual Recognition Arrangement between Australian States and Territories.

The AEI National Office of Overseas Skills Recognition (AEI-NOOSR) within the Educational Standards Branch of DEST works together with a range of professional bodies and other agencies to improve skills recognition arrangements to ensure fair, accessible and transparent recognition pathways for the overseas trained. AEI-NOOSR is named in the Migration Regulations (1994) as the body which supports the Australian Government's Skilled Migration programme by approving, and monitoring relevant professional assessing authorities and agencies. It should be noted, however, that AEI-NOOSR does not have carriage of the legislation as it pertains to occupations as that power lies with the States and Territories through Registration Boards.

The Australian Productivity Commission's terms of reference for the review are to:

- assess the efficiency and effectiveness of the MRA and the TTMRA in:
 - fostering and enhancing trade and workforce mobility between Australian States and Territories and New Zealand;
 - enhancing the international competitiveness of Australia and New Zealand businesses and Trans Tasman business sectors; and
 - enhancing the capacity of Australia and New Zealand to influence international norms and standards;
- consider whether any changes to the MRA and the TTMRA and the related legislation, or the implementation thereof, are required to improve their operation;
- examine whether broadening the scope and objectives of the MRA and the TTMRA would enhance their efficiency and effectiveness, and if so, how this might be done;
- examine options for ensuring that MRA and TTMRA issues are considered early in domestic policy processes and that implications for the scheme's regulation coordination are taken into account.

The matters raised by the review in relation to the occupational provision of mutual recognition cover activities for which responsibility is shared by a number of agencies, both Commonwealth and State, including State and Territory Registration Boards, the Department of Employment and Workplace Relations, in particular Trades Recognition Australia (TRA), the Australian National Training Authority (ANTA) and peak professional bodies. In this submission, following consultation with these agencies, DEST focuses on matters for which the Department has a

¹ *Australian Mutual Recognition Agreement (1992)*, Part 9.

national co-ordinating role, or where there are significant links between mutual recognition and the national education and training system.

This submission identifies the importance to DEST of the portability of VET qualifications and covers issues relating specifically to the TTMRA:

- the implementation of the TTMRA vis-à-vis the intended benefits relating to professional occupations and the regulatory practices of the professions,
- unintended consequences of the TTMRA
- the effect of delayed enactment of appropriate State legislation and partial registration across Australian jurisdictions in some professions, and
- data collected on registrations under TTMRA.

2. The Mutual Recognition Act 1992

One of the aims of the *Mutual Recognition Act 1992* is to facilitate the recognition of occupations across State and Territory borders. This is an important issue for the VET sector, as often, after gaining national VET qualifications, people find they are required to undertake similar training and/or assessment with a regulatory body in order to obtain an occupational licence before taking up employment. These requirements may impede the freedom of trade and mobility of the workforce.

To assist removal of these barriers, the Australian National Training Authority (ANTA) has been examining licensing and regulatory issues which impact on Training Package implementation. This includes encouraging regulators to accept Training Package qualifications as sufficient evidence to satisfy the training component of licensing requirements. The National Industry Licensing Working Group has agreed that ANTA will make a submission to the Productivity Commission on the issue of industry licensing, highlighting the range of issues in the *Licence to Skill* report.

DEST notes the importance to the national education and training system of licensing and other regulatory issues. However as these will be picked up in more detail in the ANTA submission , comments in this review will focus on the TTMRA as it relates to DEST's responsibilities in ensuring fair and equitable skills recognition processes.

3. The Trans Tasman Mutual Recognition Act 1997

3.1 The implementation of the TTMRA vis-à-vis the intended benefits relating to professional occupations and the regulatory practices of the professions.

At the time of inception, the perceived benefits of the TTMRA as it relates to occupations were proposed to be:

- i) increased opportunities for Australians and New Zealanders to work in each others country;
- ii) greater discipline on regulators contemplating the introduction of new standards, regulations and registration requirements;
- iii) greater cooperation between regulatory authorities;
- iv) greater opportunities for both countries to enhance their influence internationally through bodies such as the Asia-Pacific Economic Cooperation (APEC) forum.

The comments below regarding the operation of the TTMRA relate only to the registration in Australian jurisdictions of New Zealand registrants. DEST has no information regarding the operation of the legislation as it refers to Australians invoking TTMRA legislation in New Zealand.

While complete 2002 figures are not yet available, the data available shows that to date, a total of 3,669 professionals have registered to practise in Australia under TTMRA legislation. There is a general opinion that TTMRA is benefiting the majority of professionals and resulting in an efficient transferability of skills across the Tasman. The benefit is seen to lie in the streamlining of the process, both in terms of cost and time as it bypasses the need to apply for an assessment of overseas skills and obtain Australian recognition separately. This is particularly so in the case of those professions that assess through examination, processes which can be both lengthy and costly.

Factors limiting the benefit of TTMRA

Some States have been very slow to enact enabling State legislation. Five years after the TTMRA was enacted the Western Australian government still has not passed enabling legislation. This means that opportunities for New Zealanders are limited in that state if they wish to register under the TTMRA legislation.

There also seems to be a lack of shared understanding among State regulatory bodies and some professional bodies as to the intent of the TTMRA. It is the responsibility of the registration authorities to facilitate the operation of the TTMRA. However DEST is still, at times, called on to explain the requirement to accept applications for registration from New Zealand for registration by registration boards.

Differences across jurisdictions and professions as to the requirement to register (partial registration) mean that in some states registration is required and in others it is not. Examples of such professions are: school teaching and occupational therapy. Two limiting outcomes of this situation are that: a national picture of mobility in these professions is not possible; and individual professionals may be limited in their attempts to gain recognition and transfer skills.

Factors affecting measurement of the success of the TTMRA

There is limited information available to DEST to enable a true assessment of how successful the TTMRA has been in addressing obstacles to labour mobility. The difficulty lies mainly in obtaining the required data from State Registration Boards, making a definitive snapshot of the impact the TTMRA across the range of professions involved not possible. (See Attachment A for a more detailed discussion of the difficulties associated with collecting meaningful data relating to the TTMRA).

Nevertheless it is possible to make a number of general observations about the uptake of the TTMRA within the States and/or professions where the data is available.

TTMRA registrations by profession

It appears that the number of registrations granted under the TTMRA is generally increasing each year both in absolute numbers and as a proportion of new registrants. Table 1 shows the number of registrations granted under the TTMRA from 1998 until June 2002 for each of the professions where this data was provided. Note that the numbers for 2002 reflect the period until 30 June, ie 6 months only.

By comparison, first time registrations other than TTMRA, as represented in Table 2, shows a steady pattern of new registrations in the majority of professions across the years 1998 to 2002. The exception to this are nurses where both first time and TTMRA registrations are increasing.

Table 1 shows the numbers of professionals registering under TTMRA across the years 1998 to 2002. The data shows that the highest number of TTMRA registrations was for nurses (1672), followed by teachers (596), legal practitioners (343) and physiotherapists (252). These four professions represent 80% of total TTMRA registrations reported.

Table 2 shows the number of first-time registrations other than the TTMRA for each profession. Table 3 enables us to see the percentages of total new registrations annually that TTRMA registrations represent.

From 1998 to June 30 2002, for the top four TTMRA registering professions:

- nursing, TTMRA registrations represents 12% of the total first time registrations,
- school teaching, TTMRA registrations represents 3% of the total first time registrations,
- legal practitioners, TTMRA registrations represents 5% of the total first time registrations, and
- physiotherapists, TTMRA registrations represents 8% of the total first time registrations.

TTMRA registrations accounted for the highest percentage of all first time registrations for optometrists – 40%; followed by nurses and radiographers - 12% and physiotherapists 8%.

TTMRA registrations accounted for the lowest percentage of all first time registrations for psychologists - 0.6%, followed by architects – 1.5% and veterinarians – 1.7%.

Table 4 shows that of the seven Australian jurisdictions (Western Australia has not yet passed enabling legislation), NSW registered the highest number of professionals under the TTMRA legislation (1698), followed by Queensland (1466) and Victoria (222).

This data demonstrates the effect of partial registration (where registration is a requirement in only some Australian jurisdictions). It is also important to note the absence of TTMRA registration data from some registration boards.

The number of applications refused under TTMRA was negligible. Reasons given by registration boards refusing applications identified that the application fee had not been received with the application, or that further documentation was required resulting in the return of the application and documentation of an unsuccessful application.

Table 1: TTMRA Registrations – Total by Profession

| Profession | 1998 | 1999 | 2000 | 2001 | 2002 ¹ | Total since 1998 |
|-------------------------|------------|------------|------------|------------|-------------------|-------------------|
| Architects | 5 | 4 | 6 | 8 | 3 | 26 ² |
| Cadastral Surveyors | 0 | 0 | 4 | 2 | 0 | 6 |
| Chiropractors | 0 | 3 | 9 | 2 | 6 | 20 ³ |
| Dentists | 8 | 21 | 35 | 58 | 31 | 153 |
| Legal Practitioners | 1 | 4 | 106 | 136 | 96 | 343 ⁴ |
| Nurses | 0 | 143 | 254 | 315 | 137 | 1672 ⁵ |
| Occupational Therapists | 0 | 3 | 11 | 13 | 8 | 35 |
| Optometrists | 4 | 9 | 6 | 11 | 7 | 181 ⁶ |
| Pharmacy | 6 | 9 | 21 | 17 | 14 | 67 ⁷ |
| Physiotherapists | 1 | 24 | 44 | 66 | 117 | 252 |
| Podiatrists | 1 | 4 | 9 | 9 | 3 | 26 |
| Psychologists | 1 | 3 | 6 | 9 | 6 | 34 ⁸ |
| Radiographers | 9 | 34 | 45 | 56 | 14 | 158 |
| Teachers | 92 | 133 | 169 | 126 | 76 | 596 ⁹ |
| Veterinarians | 3 | 9 | 11 | 12 | 2 | 37 |
| TOTAL | 131 | 403 | 736 | 903 | 495 | 3,669 |

¹ 2002 data is up until 30 June

² Data not provided by NT; ACT data from 2000 only

³ Data not provided by VIC

⁴ No data provided by QLD prior to 2001; no data available from VIC as TTRMA no distinguished from the TRA

⁵ No data provided by VIC; SA & TAS data from 2001 only; no yearly breakdown from NSW

⁶ No yearly breakdown from NSW

⁷ Data not provided by VIC

⁸ No yearly breakdown from QLD

⁹ Data not available from VIC

| Profession | 1998 | 1999 | 2000 | 2001 | 2002 ¹ | Total since 1998 |
|-------------------------|------|------|------|------|-------------------|--------------------------|
| Architects | 365 | 358 | 344 | 315 | 258 | 1640² |
| Cadastral Surveyors | 54 | 48 | 63 | 47 | 55 | 267³ |
| Chiropractors | 208 | 245 | 201 | 262 | 213 | 1129⁴ |
| Dentists | 352 | 344 | 428 | 494 | 348 | 1966 |
| Legal Practitioners | 1678 | 1798 | 1398 | 2382 | 1874 | 9130⁵ |
| Nurses | 781 | 851 | 1781 | 2939 | 2028 | 12629⁶ |
| Occupational Therapists | 129 | 147 | 224 | 230 | 127 | 857⁷ |
| Optometrists | 44 | 42 | 48 | 58 | 81 | 273⁸ |
| Pharmacy | 335 | 374 | 445 | 408 | 456 | 2018⁹ |
| Physiotherapists | 470 | 432 | 565 | 825 | 655 | 2947¹⁰ |
| Podiatrists | 197 | 195 | 220 | 226 | 184 | 1022 |
| Psychologists | 869 | 909 | 976 | 916 | 827 | 5913¹ |
| Radiographers | 261 | 246 | 248 | 271 | 175 | 1201 |
| Teachers | 4541 | 4212 | 4052 | 5034 | 2077 | 19916² |
| Veterinarians | 391 | 404 | 473 | 590 | 330 | 2188³ |

¹ Numbers for 2002 reflect the period 30 June, ie 6 months only

² No data available from TAS & NT

³ No data available from TAS

⁴ Data not provided from VIC

⁵ QLD data available for 2001 only; NT & VIC no data provided

⁶ No data available from VIC & QLD; SA data from 2001 only; no yearly breakdown from NSW

⁷ No registration in NSW, VIC, TAS & ACT

⁸ Data not provided by NSW & VIC

⁹ Data not provided by VIC & QLD

¹⁰ Data for 2001/02 only provided by QLD; data not available from VIC & TAS

Table 2: First time registrations other than TTMRA - Total by Profession

Table 3: Total first time registrations including TTMRA by Profession since 1998

| Profession | Total first time registrations other than TTRMA | Total TTRMA registrations | Total of all registrations | TTRMA percentage of total registrations |
|------------|---|---------------------------|----------------------------|---|
| Architects | 1640 | 26 | 1666 | 1.6% |

¹ No yearly breakdown from QLD

² Data available from QLD only

³ No data available from VIC

| | | | | |
|-------------------------|--------------|--------------|--------------|-------|
| Cadastral Surveyors | 267 | 6 | 273 | 2.2% |
| Chiropractors | 1129 | 20 | 1149 | 1.7% |
| Dentists | 1966 | 153 | 2119 | 7.2% |
| Legal Practitioners | 9130 | 343 | 9473 | 3.6% |
| Nurses | 12629 | 1672 | 14301 | 12.0% |
| Occupational Therapists | 857 | 35 | 892 | 4.0% |
| Optometrists | 273 | 181 | 454 | 40.0% |
| Pharmacy | 2018 | 67 | 2085 | 3.2% |
| Physiotherapists | 2947 | 252 | 3199 | 7.9% |
| Podiatrists | 1022 | 26 | 1048 | 2.5% |
| Psychologists | 5913 | 34 | 5947 | .6% |
| Radiographers | 1201 | 158 | 1359 | 11.6% |
| Teachers | 19916 | 596 | 20512 | 3.0% |
| Veterinarians | 2188 | 37 | 2225 | 1.7% |
| TOTAL | 62458 | 3,669 | 66127 | |

Table 4: Total TTMRA registrations for each profession by State

| Profession | NSW | QLD | VIC | SA | NT | ACT | TAS |
|---------------------|-----|-----|-----|----|--------------|-----|-----|
| Architects | 17 | 0 | 9 | 0 | Not provided | 0 | 0 |
| Cadastral Surveyors | 0 | 4 | 1 | 1 | 0 | 0 | 0 |

Department of Education, Science and Training, submission to the Australian Productivity Commission, Review of Mutual Recognition, March 2003

| | | | | | | | |
|-------------------------|-------------|---------------|---------------|------------|-----------|-------------------|-----------|
| Chiropractors | 11 | 7 | Not provided | 2 | 0 | 0 | 0 |
| Dentists | 72 | 30 | 40 | 4 | 3 | 3 | 1 |
| Legal Practitioners | 291 | 38 | Not provided | 8 | 2 | Included with NSW | 4 |
| Nurses | 823 | 722 | Not available | 25 # | 65 | 28 | 9 # |
| Occupational Therapists | | 22 | | 3 # | 10 | | |
| Optometrists | 144 | Not available | 34 | 2 | 0 | 0 | 1 |
| Pharmacists | 41 | 13 | Not provided | 6 | 3 | 4 | 1 |
| Physiotherapists | 144 | 61 | 31 | 9 | 5 | 2 | 3 |
| Podiatrists | 14 | 2 | 8 | 1 | | 1 | 0 |
| Psychologists | 14 | 9 | 8 | 1 | 1 | 1 | 0 |
| Radiographers | 58 | 6 | 87 | 1 | 1 | 0 | 5 |
| Teachers | | 547 | Not available | 46 | | | 3 |
| Veterinarians | 6 | 5 | 4 | 6 | 7 | 1 | 8 |
| TOTAL | 1635 | 1466 | 222 | 115 | 97 | 40 | 35 |

 No State Registration required

Data from 2001 only

New Zealand trained registrants

Table 4 shows that mobility of New Zealand trained professionals has certainly been facilitated by the TTMRA with the number of New Zealand qualified professionals registering in Australia under the TTMRA increasing each year.¹

Table 4: New Zealand trained professionals registering under TTMRA

| | 1998 | 1999 | 2000 | 2001 | 2002 ² | TOTAL |
|--|------|------|------|------|-------------------|-------|
| New Zealand qualified TTMRA registrants | 89 | 171 | 227 | 265 | 153 | 905 |

Table 5 shows that, most New Zealand trained professionals coming to Australia under the TTMRA are teachers (400), followed by radiographers (147), physiotherapists, dentists, nurses and pharmacists.

Table 5 : Top Six Professions of New Zealand qualified TTMRA registrants

| Profession | New Zealand Trained TTMRA Registrants |
|------------------|---------------------------------------|
| Teachers | 400 |
| Radiographers | 147 |
| Physiotherapists | 93 |
| Dentists | 82 |
| Nurses | 69 |
| Pharmacists | 41 |

In summary, from the available information provided by State Registration Boards, the TTMRA has made some impact in improving the portability of qualifications & access to registration & employment opportunities for New Zealanders but the proportion of registrants entering the Australian workforce under the TTMRA is not balanced across the range of professions.

3.2. Unintended effects – “Third Country” issue

Through its close association with peak professional bodies, AEI-NOOSR is aware of claims that the TTMRA is perceived by some bodies as providing ‘back-door’ entry into Australia and thereby circumventing the Australian professional recognition process. To be granted a permanent visa to Australia in the points tested visa categories of the Government’s skilled migration program, a successful skills assessment is essential. In some professions this is a lengthy and costly process that some professionals³ prefer to avoid, instead seeking registration in New Zealand and, on the basis of TTMRA, demonstrating that they meet registration requirements in Australia.

Given that the majority of registration authorities were unable to provide neither information on the country of training underpinning the New Zealand registration, nor the period of registration in

¹ As the majority of registration boards were not able to provide information on the country of training of TTMRA registrants, this data represents a trend only. The lack of comprehensive data prevents a valid comparison with the total number of TTMRA registrants as well as registrants trained in other countries

² 2002 data is to 30 June only

³ A journal article and an information pack distributed in the UK have been cited as encouraging physiotherapists who want to gain registration in Australia, to do so via New Zealand registration and TTMRA mutual recognition arrangement, thus bypassing what is seen as a more onerous assessment process developed by the Australian physiotherapy assessing authority.

New Zealand, the impact of “third country” trained registrants is difficult to substantiate in a valid and reliable manner. DEST understands that individual professional bodies will be highlighting this concern in their own submissions.

DEST has canvassed the opinion of professional bodies concerned with the requirement under TTMRA legislation to register “third country trained” professionals. Most bodies considered that, for those trained in a country other than New Zealand, a requirement of a minimum period of professional practice in the specified occupation in New Zealand prior to application to work in Australia under TTMRA would resolve concerns that professionals are entering Australia and the profession without meeting eligibility requirements.

Recommendations

Considering that the TTMRA represents the only treaty level agreement on professional recognition matters that Australia has with another country, Australia would do well to ensure that it is used in the spirit of the intent of the original legislation – that it provides wider opportunities for Australians and New Zealanders to work in each others’ countries.

While not wanting to introduce obstacles to New Zealanders, the review may wish to consider the introduction of a minimum period of New Zealand professional practice to alleviate concerns that some professionals trained in a third country are using the TTMRA to gain permanent Australian residency, instead of going through the usual assessment processes for overseas professionals wanting to work in Australia.

In addition, to be able to monitor the efficacy of the arrangement and to enable evaluation and measurement, a holistic set of data is essential. DEST recommends that all State Registration boards be directed to collect data relating to the country of training of New Zealand registrants as well as the period of registration in New Zealand.

3.4. Communication and Cooperation Between Registration Authorities in New Zealand and Australia

Greater cooperation between regulatory authorities

Some professional bodies have reported that TTMRA has been an impetus to resolve differences between jurisdictions and to a certain degree closer cooperation between jurisdictions has resulted. Those bodies experiencing improved cooperation include the Australian Nursing Council, the Australasian Veterinary Boards Council and the Australian Dental Council. It should be noted that these three bodies represent professions with available resources to undertake such an exercise and to pursue favourable outcomes. Information from other 'smaller' professions indicates that, while the benefits of this approach are clear, they do not command adequate resources to pursue these ends.

In the case of teachers, partial registration in Australia has meant that registration under Trans Tasman mutual recognition has only been possible for New Zealand teachers in Queensland and South Australia, since 2002 in Tasmania, and since 2003 in Victoria.

Interestingly, the requirements under mutual recognition seem to have been one factor in motivating discussion and debate on an Australian national registration process for teachers and the need for national consistency. Registration is now a requirement for all school teachers in four States: Queensland, South Australia, Tasmania and Victoria. The Northern Territory and Western Australia are debating the issue with registration likely to be introduced within the next few years.

Impediments to closer harmonization between Australian and New Zealand professional bodies have been identified by a small number of professions, including optometry and radiography. It is DEST's understanding that the peak professional bodies representing these professions will make individual submissions to the Review regarding these issues.

Developing relationships with counterparts in New Zealand

For the TTMRA to achieve its full potential in enhancing the freedom of New Zealanders and Australians to work in each other's countries, it is necessary for all peak professional bodies in Australia representing registrable professions to have counterpart organizations in New Zealand. Peak professional bodies have cited concern regarding the lack, or perceived lack, of consultation prior to the signing of the Arrangement and requirements under legislation coming into force.

A number of occupations have developed good working relationships with their counterparts in New Zealand to underpin the arrangements that already exist. However, the resources (time, money and intellectual) necessary to develop relationships with New Zealand counterparts can be difficult for small organisations. For this reason some of the smaller professions struggle to undertake the necessary harmonization to facilitate mutual recognition across the Tasman.

Recommendation

While the TTMRA has been effective in encouraging cooperation and communication between professional bodies and regulatory authorities in New Zealand and Australia, the Productivity Commission may wish to suggest appropriate support or incentives to attract and maintain the support of the smaller professions in furthering this benefit of the TTMRA.

3.5 Implementation Issues

Issues to do with Australian States & Territories

The concept of mutual recognition assumes similar structures and regulations in each jurisdiction and equivalence of occupation. The fact that States have passed enabling legislation at varying times since the inception of the TTMRA in 1998 has affected the degree of uptake and hence opportunities available to both Australians and New Zealanders to work in each others' countries.

Contact with registration boards indicates that in some states no distinction is made between registration under MRA and TTMRA and there seems to be some confusion as to the difference.

Issues from Peak Professional Bodies

Peak professional bodies have reported a number of ongoing implementation issues of a general nature that have detracted from the effectiveness of the Arrangement. These are summarised below:

- **Lack of confidence in the registration requirements applying in New Zealand**
While there remain some professional bodies that express concern at the registration requirements in New Zealand, these are few and in the main these professions accept the requirement to register professionals under the mutual recognition principle.

DEST understands that the professions that have concerns in this regard will raise them in their individual submissions.

- **Occupation as practised in New Zealand is not an equivalent occupation**
While the legislation identifies formal mechanisms for resolving concerns regarding another jurisdiction's requirements and the equivalency of occupations, these do not appear to have been pathways that have addressed the concerns of some of the bodies. For example, the need for referral to a Ministerial Council and the invoking of a Ministerial Declaration both may both involve resources beyond the means of small professional bodies.
- **Recency of practice and registration based on demonstration of competence**
Recency of practice is a requirement for registration in some professions by some registration boards. It has been raised as an issue by some registration boards that are unable to enforce this under TTMRA.

Increasingly, registration boards require professionals to demonstrate competence to practice and require annual registration renewal based on this principle. Under TTMRA legislation registration boards (where annual registration is contingent on the demonstration of professional development/competence), may find they are obliged to register professionals from jurisdictions with no such requirement. This is seen to undermine the efforts of the profession/registering authority to ensure professionals have current practicing credentials.

- **Deemed registration**
The TTMRA uses a system of one month deemed registration following lodgement of a written application for registration. The applicant is then either granted or refused registration, or the registration authority may postpone the granting of registration in certain circumstances.

Peak professional bodies indicate that, from their point of view, the period of deemed registration is working and they were not aware of any delays with this process. The only

possible exception identified is where a delay may occur as a result of the applicant not paying required fees, not providing documents (eg professional indemnity insurance) or when the board only meets every 4-6 weeks, thus delaying the point at which a decision can be made.

The only issue raised with regard to the deemed registration period is that it allows some professionals to work without professional indemnity insurance that is otherwise required.

- **Bilateral Mutual Recognition Arrangements predating TTMRA**

A number of professions which require registration already have in place bilateral recognition arrangements between Australia and New Zealand.

For example, there is State legislation in place that permits the immediate recognition of veterinarians who have graduated from New Zealand vet schools. This means that New Zealand trained vets have been granted registration in Australia over this period of time – but not under TTMRA. NSW has registered 51 graduates of Massey University, New Zealand, under the Veterinary Surgeons Act over the reporting period 1998 to 2002.

This pre-existing legislation means that the TTMRA has neither enhanced nor impeded the mobility of Australian and New Zealand trained veterinarians to those jurisdictions. It does, however, result in seemingly low numbers of veterinarians applying under TTMRA for registration in those jurisdictions with pre-TTMRA mutual recognition arrangements. The identification of such arrangements in the overall picture of mobility of professionals across the Tasman is therefore needed to provide a true picture of impact of the TTMRA in future evaluations.

Recommendations

In order to improve the efficiency and effectiveness of the Arrangements the awareness of all stakeholders needs to be raised regarding the nature of the legislation and the responsibilities the States have under the legislation.

In order to support future reviews and evaluations of the arrangement by providing an accurate and holistic picture of the uptake of the TTMRA, State registration authorities need to identify existing legislation and bilateral arrangements that impinge on the mobility and/or numbers of professionals seeking registration under the mutual recognition principle.

At present smaller professions do not have the same resources as the larger national bodies when it comes to accessing resolution mechanisms. Consideration therefore needs to be given to bringing the formal mechanisms within the reach of smaller professions where discussions with trans-Tasman counterparts do not resolve areas of difference.

Lastly, appropriate incentives and penalties need to be considered in order to encourage all State Registration authorities to act in accordance with the intent of the legislation to remove barriers for New Zealanders and Australians to work in each others' countries.

4. Scope of Mutual Recognition

Are there grounds for extending the scope of the TTMRA? At present the TTMRA applies only to professional services delivered through what the General Agreement on Trade in Services (GATS) refers to as the 'presence of natural persons'. If the provision of professional services on-line (that is, through cross-border supply) continues to increase, there may be some basis for considering the extension of the TTMRA to cover such activity. AEI-NOOSR is strongly of the view that there would be a need for consultation with the relevant professional bodies and State registration authorities in considering any expansion of the TTMRA to cover the on-line provision of professional services.

In discussion of the principles underlying such an expansion of the TTMRA, professional bodies have raised concerns about cross-jurisdiction complexities regarding issues such as accountability, liability and insurance requirements. For example, a health care hotline might have on-line services requested in one jurisdiction and delivered in another for consumption in a third. General concern has been expressed that such a service is unregulated and as the Act deals with equivalency of occupation, rather than delivery of services, cross-border provision has implications for competence, jurisdiction and liability. Professions with these concerns will no doubt raise them in their own submissions.

Nevertheless the Productivity Commission may wish to take these concerns into account in its consideration of the potential benefits in any extension of the scope of the TTMRA.

Recommendation

That caution be exercised in any expansion of the scope of the scope of the TTMRA until consideration has been given to any unintended consequences and until appropriate consultation with the professional bodies has occurred.

5. Conclusion and Summary of Recommendations

There are some success stories in which the TTMRA has resulted in harmonization between Australian and New Zealand counterpart bodies. However, there are also some instances of dissatisfaction with the operation of the Arrangement in some professions and cases where individuals trained in a third country have not been able to invoke their right to registration.

This submission recommends:

1. That awareness of all stakeholders be raised regarding the nature of the legislation and the responsibilities the States have under the legislation. In particular that:
 - shortcomings relating to occupational registration authorities in all jurisdictions in facilitating the operation of the TTMRA are addressed; and
 - an updated user's guide is prepared for prospective registrants regarding the operation of the Arrangement.
2. That the review consider the introduction of a minimum period of New Zealand professional practice to alleviate concerns that some professionals trained in a third country are using the TTMRA to gain permanent Australian residency, instead of going through the usual assessment processes for overseas professionals wanting to work in Australia.
3. That consideration be given to bringing the formal mechanisms of appeal within the reach of smaller professions, where the discussions with trans-Tasman counterparts do not resolve areas of difference.
4. That consideration be given to appropriate incentives and / or penalties where the intent of the legislation is frustrated by a Registration board or body denying registration in an occupation under the TTMRA.
5. That in order to be able to monitor the efficacy of the arrangement effectively and to enable accurate evaluation and measurement, a holistic set of data is collected by all State Registration boards relating to the country of training of New Zealand registrants as well as the period of registration in New Zealand.
6. That caution be exercised in expanding the scope of the TTMRA until consideration has been given to the unintended consequences of some clauses and until appropriate consultation with the professional bodies has occurred.

ATTACHMENT A**Data Collection & Related Issues**

In order to obtain a snapshot of the way in which the TTMRA is being used and the impact on professions, DEST requested information from each of the State Registration Boards for:

- the number of registrations invoked under the TTMRA legislation from 1998 – 2002 inclusive, including any applications under the TTMRA refused as well as the reason for refusal, with the following breakdown:
 - country of undergraduate award that underpins the New Zealand registration; and
 - date of registration in New Zealand
- existing reciprocal arrangements which provide for registration of New Zealand professionals (other than TTMRA); and
- total first time registrations (such as Australian graduates) for the same period to assist in comparison of data.

The data collected had limited value in assisting DEST to determine trends or substantiate concerns due to a number of issues:

- As Registration Boards were not required under legislation to collect such data, there was no common understanding to form the basis of the collection of data from the outset.
- Data is partial, leading to an incomplete picture of the impact / uptake of the TTMRA both across States and professions
- Some registration boards have:
 - collected information about country of first qualification and period of registration in New Zealand prior to coming to Australia but many have not.
 - not differentiated between the MRA and the TTMRA in the processing of registrations and hence could not help with isolating the number of registrations under the TTMRA.
 - collected information on a financial year basis and others on a calendar year basis which has made it difficult to extrapolate and compare registrations from year to year.
 - appear not to be resourced sufficiently to enable provision of required data. The only way some States were able to provide the information was through a manual count.