Te Kaunihera Tapuhi o Aotearoa
Nursing Council of New Zealand

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Mutual Recognition Schemes Study
Productivity Commission
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**Nursing Council of New Zealand – Submission in response to Productivity Commission Issues Paper (January 2015)**

The following is a submission on behalf of the Nursing Council of New Zealand in response to the Productivity Commission Issues Paper on the Mutual Recognition Scheme dated January 2015.

**Background**

The Nursing Council, established under the Health Practitioners Competence Assurance Act 2003 ("HPCA Act"), is the regulatory authority responsible for the registration of nurses in New Zealand. It has a primary function to protect the health and safety of member of the public by ensuring that nurses are competent and fit to practise.

The Council has only submitted on the questions relevant to its regulatory role.

**Submission**

***26. How well does mutual recognition between Australia and New Zealand work (for nurses)?***

In general the mutual recognition scheme between Australia and New Zealand works well. This has been achieved by ensuring that AHPRA and New Zealand have similar standards for education of nurses and for assessing overseas applicants for registration.

There are issues, as previously addressed in the submission provided on 23 July 2008, where nurses come under one of the "fitness to practise processes" under the HPCA Act, but have already gained registration in Australia under mutual recognition. This is because of the difference in the provisions that deal with furnishing information in the Trans-Tasman Mutual Recognition Act 1997 for initial registration and with applicants who are already registered.

**Initial registration under section 19**

When New Zealand nurses apply for registration in Australia under section 19 of the TTMR Act they are required (under section 19(2)(g)) to declare whether they are subject to any special conditions in practising nursing as a result of ***criminal, civil or disciplinary proceedings*** in any participating jurisdiction (emphasis added). This paragraph does not include conditions that are included as a result of competence or health reviews as these are separated out in the HPCA Act. Concerns about nurses in New Zealand can be raised with the Nursing Council by way of notification or complaint. A complaint can be about a nurse's conduct, or a notification can be made about competence or health concerns.

Fortunately there is a catch all provision in section 19(2)(i) that requires the applicant to give consent to the making of inquiries of, and the exchange of information with, the authorities of any participating jurisdiction regarding the applicant's activities in the relevant occupation.

Conditions are included in the applicant's practising certificate and on the register and can therefore be provided to AHPRA as it is information on the public register but other information around the reasons for the conditions would not be able to be provided in the absence of this catch all provision.

Section 20(2)(b) of the TTMR Act seems to permit the Council to impose any conditions on registration for the purpose of imposing on the applicant's registration in New Zealand a condition that applies in Australia and vice versa but section 20(4) suggests that these conditions are only to be imposed having regard to the relevant qualifications of the applicant, not about conditions included for health or competence. Most of the conditions included in nurses' scopes of practice in New Zealand are for reasons relating to competence or health.

Under section 32 (and equivalent) of the TTMR Act if an individual's registration is cancelled or suspended or subject to a condition on disciplinary grounds or a result of or in anticipation of criminal, civil or disciplinary proceedings then the individual's registration in the other jurisdiction is affected in the same way.

Obviously this does not include conditions or suspension on the grounds of a review of competence or health but the catch all provision of section 19(2)(i) means that inquires can be made and processes put in place to determine whether conditions should be included.

**Furnishing information post registration –sections 32 and 33**

Issues arise for the Council when a nurse is already registered in Australia but subsequently has conditions included or is suspended for non-discipline related issues in New Zealand.

Section 33 does not require the release of information relating to a nurse's health or competence. This cannot be said to come within the scope of disciplinary action under section 33(1)(a)(iii) of the TTMR Act and such a release could be contrary to the Privacy Act (for competence ) and the Health Information Privacy Code (for health).

The HPCA Act distinguishes between issues relating to a practitioner's competence, and fitness to practise (health) which are under Part 3 of the Act and complaints and discipline which are in Part 4. Because of the separate categories, issues relating to

a nurse's competence or health are dealt with in an entirely different process to disciplinary matters.

It could be said that the Australian Health Practitioner Regulation National Law Act 2009 has the same issue as it does not refer to "disciplinary action". Under that Act health competence and conduct issues are separated out by referral to specialist panels for consideration. Therefore an argument could be made that those issues relating to competence to health could not be referred to the Nursing Council either as they are not disciplinary in nature.

The TTMR Act came into force in 1997 at which time, in general, the Australian regulatory authorities dealt with health and competence concerns under their disciplinary provisions. The Nurses Act 1977 had a health process which was separate to the disciplinary process so these provisions have always been a source of concern in New Zealand.

The solution would be to amend the provisions to enable AHPRA and the Council to furnish information about health, competence and disciplinary matters as nurses under these processes may pose a risk to public safety.

The reason behind this suggestion is primarily to protect the public by making it harder to move from one jurisdiction to another without both jurisdictions being made aware of the actions that have been taken.

This is not proposed as a mean of preventing nurses from moving from one country to another but as a means of actually facilitating that movement. The current position is that because of the difficulty in furnishing that information, the nurse may be required to be considered by AHPRA and then Nursing Council or vice versa rather than allowing the Boards to exchange information that is useful in deciding whether any conditions are required in the other jurisdiction.

***Question 38 How often do registration bodies impose conditions on people registering under mutual recognition and what conditions are imposed?***

The Nursing Council rarely imposes conditions on applicants who have gained their qualification in Australia as the education standards and scope of practices are equivalent. However New Zealand has recently amended the Nurse Practitioner scope of practice to make it a prescribing qualification. Therefore Nurse Practitioners registered in Australia will have a condition included that they cannot prescribe, which is also the case for New Zealand NPs who have not completed the prescribing qualification and assessment.

Of the 544 nurses who have been registered under mutual recognition since April 2013, only 30% are nurses who gained their qualification in Australia.

On occasions conditions that have not been included by AHPRA for internationally qualified nurses who may have a restricted scope of practice may be included by New Zealand on the basis of the applicant's qualifications. An example would be a nurse from the United Kingdom who has a scope of practice restricted to Child Health in the UK because of the qualification, (not a qualification that is offered is New Zealand or Australia) but has been granted registration without conditions in Australia. There are generally no issues around this as these applicants only wish to practise in the area of child health. The condition would be that the practitioner practise in child health and only limits the scope of permitted activities.

***Question 40 Have the review processes available been effective in addressing disputes about conditions imposed on occupational registrations?***

There have been no reviews that the Council is aware of though the Trans-Tasman Occupations Tribunal. Applicants who may have issues regarding conditions included under the TTMR Act are directed to the review of delegated decisions provision under the HPCA Act (Clause 18, Schedule 3) in which they can request a review of the decision by the full Council and/or the appeal provisions under that Act (section 106) as these processes are more readily accessible.

***Question 41 – Should people registered under mutual recognition be subject to the same ongoing requirements as other license holders in a jurisdiction?***

The Council has never accepted that mutual recognition of registration means that it cannot include the conditions related to ongoing competence that all New Zealand registrants are subject to. As previously submitted the TTMR Act only permits the inclusion of conditions that are already in place in Australia or for the purpose of achieving equivalence for registration. The Act is silent on requirements for applications for practising certificates which is a separate process under the HPCA Act.

The Council strongly supports the idea that all people registered under mutual recognition should be subject to the same ongoing requirements as other licence holders as that is the whole basis of the HPCA Act and one of the reasons for its introduction in its current form which has a very strong emphasis on maintaining competence.

***Question 42 Are amendments to mutual recognition legislation needed to clarify whether requirements for ongoing registration apply equally to all registered persons within an occupation?***

In the interests of clarity the Council supports amendment to make it clear in both jurisdictions that requirements for ongoing registration (or holding a practising certificate as it is described in New Zealand) should apply equally to all registered persons within an occupation. There will be no issue with dual requirements as the Council recognises professional development and practice that has taken place in other jurisdictions.

***Question 43 is there any evidence of jurisdiction "shopping and hopping" occurring for occupations which is leading to harm to property, health and safety in another jurisdiction via mutual recognition? Is there evidence of any benefits, such as regulatory competition and innovation between jurisdictions?***

The Council does not believe that it has an issue with "shopping" as it has a very close relationship with AHPRA and meets regularly to agree on common requirements for registration. On occasions there has been a change in one jurisdiction, such as requiring two years post graduate experience for overseas applicants, that has led to an increase in applications to Australia or New Zealand to avoid additional requirements. However, the Council does not believe that this is a significant issue because of the close communication that has been maintained and these changes have stimulated discussion and innovation in ensuring that registrants are qualified (educationally equivalent) and competent to practise in both Australia and New Zealand.

The issue around "hopping" is addressed in the submission concerning furnishing information. Making some legislative amendment to permit the free flow of information between jurisdictions would ensure that this could not occur.

***Question 44 How effective are current informal and formal processes - dialogue between jurisdictions, referral of occupational standards to Ministerial Councils and recourse to a tribunal – in addressing concerns about differing standards across jurisdictions?***

The effectiveness of informal processes is addressed above. There have been no formal processes such as referral of occupational standards to Ministerial Councils or recourse to a tribunal.

**Question 46 Is there a strong case for adopting automatic mutual recognition more widely?**

The Council does not support automatic mutual recognition for several reasons:

- It might permit shopping i.e. moving from one jurisdiction to another if there are issues around competence, health or discipline.

- Although there are very few occasions when the Council has included conditions in a practitioner's scope of practice on the basis on their qualification, it has occurred and the Council believes it should retain the right to consider an application for registration under the TTMR Act in the interests of public safety.

- The Council notes that it would be aware if an individual's registration was cancelled or suspended or subject to a condition on disciplinary grounds or a result of or in anticipation of criminal, civil or disciplinary proceedings but that automatic mutual registration may not alert it to whether an individual is the subject of any preliminary investigations or action that might lead to disciplinary proceedings or the subject of any disciplinary proceedings (section 19 (2)(e) of the TTMR Act).

- The Council needs to ensure that it has carried out all the appropriate criminal checks to ensure that a practitioner is fit for registration and to continue practising. There is the potential for internationally qualified nurses to be registered in Australia, or New Zealand, but then leave the country for a period of time. It is important that the jurisdiction in which the practitioner is practising is entitled to request all the relevant information required to ensure that the nurse is fit to practise.

- In New Zealand it is anticipated that regulatory authorities will have a greater role to play in ensuring that practitioners do not pose a risk to vulnerable children under the Vulnerable Children Act 2014 and any curb on the ability of regulatory authorities to screen registrants would not assist them in this role.

- Once an applicant is registered they are already able to move freely from one jurisdiction to another, provided they maintain a practising certificate in each jurisdiction.

- There is a cost to each regulatory authority in ensuring that registrants are entitled to hold a practising certificate by maintaining competence and fitness to practise, and disciplinary costs. These costs are paid by the practising certificate fee and are borne by the profession. If registrants are able to practise in one jurisdiction while holding a practising certificate in another then the cost of carrying out disciplinary functions (funded by a disciplinary levy in New Zealand) or reviews of fitness to practise will not be appropriately funded.

Yours sincerely

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