



From: New Zealand Registered Architects Board

To: Australian Productivity Commission
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CC: Architects Accreditation Council of Australia
New Zealand Institute of Architects (Inc)
New Zealand Ministry for Business, Innovation and Employment

Subject: Submission to 2014 Review of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement

Deadline 27 February 2015

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Thank you for the opportunity to comment on the 2014 Review of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement.

The matters raised in the consultation document in some cases have direct relevance to the work of the New Zealand Registered Architects Board (NZRAB), hence this submission.

Background to the NZRAB

The NZRAB is a statutory entity tasked with registering, monitoring and, if need be, disciplining New Zealand architects. This is done to protect the public, which in turn protects the reputation of the architectural profession.

The NZRAB gains its authority from the Registered Architects Act 2005. Under Section 7 of the Act, in New Zealand no one except a New Zealand Registered Architect can:

- use the title "Registered Architect"; or
- describe him or herself as an "architect" when providing building design services.

Other persons may design buildings, but they may not call themselves "Registered Architects" or "architects", though an architect registered in another jurisdiction can use the title Registered Architect so long as he or she makes clear the name of the jurisdiction.

Thus in New Zealand the NZRAB:

- registers architects who have been assessed by their peers as competent to practice independently
- maintains an online register, so the public can confirm that an architect is registered
- reviews the competence of architects every five years
- investigates complaints and, if need be, disciplines architects.

In that sense, the NZRAB is analogous to each of Australia’s state registration authorities and the Architects Accreditation Council of Australia (AACA) combined.

The NZRAB is fully funded from fees paid by architects and registration applicants.

The Trans-Tasman Mutual Recognition Arrangement as it applies to Architects

Any currently-registered Australian architect is entitled to registration in New Zealand as of right, and vice versa. In New Zealand there is no fee for processing a TTMA application and registration is completed within a few days so long as the applicant provides the required information and pays for an annual registration certificate (NZ\$644 for 12 months registration) registration is completed within a few days. The application form is available on line. Thus there is no “deemed registration” as described in the discussion paper (page 10) followed by additional assessment procedures – registration is as of right and immediate.

The table below indicates the extent to which this facility is used, reflecting the relative strengths of the two economies.

	2013/14	2012/13	2011/12	2010/11
NZ Registered Architects at 30 June	1,722	1,671	1,621	1,606
New registrations (excludes TTMRA)	63	47	79	48
TTMRA registrations	27	16	8	4

The NZRAB’s overall view is that for the architectural profession in both countries an automatic right to registration “across the ditch” is useful, in that as a result clients in Australia and New Zealand have more choice and Australian and New Zealand architects have additional opportunities.

The argument against this arrangement would be that architectural processes in New Zealand and Australia are so dissimilar that in terms of protecting the public there is too much risk in allowing an architect from either country to practise in the other economy without a competence assessment in the “host” country. The NZRAB has seen no evidence of this or received any such indication, suggestion or report. The NZRAB has never received a complaint against an architect previously registered in Australia where a lack of understanding of local requirements was involved. Also, a competence issue has never arisen in regard to a former-Australian architect when the NZRAB has conducted the mandatory five yearly competence-reviews required of all New Zealand architects.

This risk is also mitigated in that the NZRAB uses the same procedures and standards as Australia for assessing and recognising academic qualifications for initial registration and shares the same set of competencies for architects when undertaking initial registration assessments. The actual assessment procedures between Australia and New Zealand are different however, Australia relying in part on written tests and New Zealand relying more on interactive assessments, ie a three-hour professional conversation between the applicant and two senior architects. Both approaches are valid, in the NZRAB’s view.

Thus the NZRAB sees merit in retaining the current arrangements as they apply to Australian and New Zealand architects.

Productivity Commission Proposals

The discussion paper posits a problem with the TTMRA as it relates to occupations and then offers a solution which the NZRAB believes would be a mistake.

The discussion paper (page 12) refers to “Requirements for ‘manner of carrying on’ an occupation and says:

Applicants under mutual recognition must meet local requirements for ongoing activities of persons registered to practice an occupation. There is potential for these laws to significantly impede service provision across jurisdictions. For example, an individual seeking to provide services in a second jurisdiction might first be required to register, establish a principal office, set up a new trust fund for monies received, and develop a complaints process in the second jurisdiction.

For architects this is incorrect. In New Zealand an architect is not required to “establish a principal office, set up a new trust fund for monies received, and develop a complaints process” etc. Many architects, for example, are employees. An Australian architect taking on a particular project in New Zealand may well enter into an arrangement with a local practice and share the work or parts of the project. The inference of the discussion paper is that substantial transaction costs are involved which is not the case.

The discussion paper (page 13) then offers a solution so that:

Under this approach, a registered architect based in New Zealand providing services to a client in Australia would not need to register in Australia, or comply with Australian regulations governing characteristics of their practice (for example, insurance and continuing professional development requirements). However, the New Zealand-based architect would have to abide by the Australian building code.

This suggestion appears to reflect a misunderstanding of what occupational licensing is. Occupational licensing benefits the public not only in that it establishes a minimum competency standard for practitioners but also it is a framework by which a practitioner can be held to account.

So for example, if an architect behaves unethically or incompetently in either Australia or New Zealand it should be the registration authority in the country where the alleged failing occurred that investigates and, if need be, disciplines the architect. The inference of the discussion paper is that somehow an Australian architect working in New Zealand could and should be disciplined by his or her home registration authority in Australia, and likewise for a New Zealand architect practising in Australia. The NZRAB, based in Wellington, would struggle to investigate allegations of incompetence in relation to a project in Darwin.

Likewise accountability for the registration entity could not work in that circumstance. Expecting the state government of Western Australia to hold to account the Architects Board of Western Australia for failing to protect people in New Zealand who are the clients of a Western Australian Registered Architect working in New Zealand would be unrealistic.

The NZRAB has heard accounts of offshore architects and practices involved in the Christchurch rebuild attempting to use offshore contract templates that aren't appropriate in New Zealand, this being the sort of a mistake that the Commissions' proposals would encourage. The increasing use of risk-based consenting also requires local registration.

If policy makers believe that the current transaction costs of Australian and New Zealand architects being registered as of right "on the other side" are material, then the solution would be to replace all the Australian state and territorial registration authorities and the NZRAB with an *Australia and New Zealand Registered Architects Board*.

The NZRAB notes however that for an Australian or New Zealand architect and therefore his or her clients those transaction costs are essentially nil.

Discussion Document Questions

Throughout the discussion document numerous questions are asked of respondents. The questions about which the NZRAB wishes to respond are as follows

1) What have been the benefits of mutual recognition under the MRA and TTMRA, and what evidence is there to support your assessment?

The NZRAB observes that as per the statistics provided above significant numbers of architects move both ways across the Tasman and this is good for the economies, consumers and the profession in both countries. This is especially so when the business cycles of the two countries are not in sync, so that labour shortages and surpluses tend to be relieved.

2) What have been the costs of implementing and maintaining mutual recognition under the MRA and TTMRA, and to what extent are these outweighed by the benefits?

For the architectural profession and for the users of architects' services the costs are negligible.

3) Are there further benefits that could be realised from extending mutual recognition? What are the likely costs of doing so?

For architectural services none in the NZRAB's view.

4) What evidence is there that inter-jurisdictional differences in laws for the sale of goods and registration of occupations would, without mutual recognition, significantly impede cross-border movement of goods and labour?

If the TTMRA was not in place, an Australian architect seeking registration in New Zealand would have to be assessed, which takes time and for which the applicant would have to pay fees in total of \$1,718 (GST included) or if he or she was judged to be sufficiently experienced a lesser total fee of \$1,150 (GST included) or \$632.50 (GST included) if an APEC Architect (see question 63 below).

5) For which goods and occupations is mutual recognition a better alternative than other forms of regulatory cooperation (for example, harmonisation) in the sense that it generates a greater net benefit to the community?

The NZRAB notes that mutual recognition makes particular sense when the activity recognised has to then be policed in some way locally, the provision of architectural services being an example of this.

6) Are there areas where changes to the current architecture of the MRA and TTMRA for goods exemptions, exceptions and exclusions are warranted? If so, where and why?

The NZRAB has no opinion, except that for the provision of architectural services no changes are suggested.

7) How significant would the impact of your proposed changes be on the efficiency and effectiveness of the MRA and TTMRA? What would be the costs of such changes?

No changes suggested.

27) To what extent do interjurisdictional differences in laws for the 'manner of carrying on' an occupation hinder labour mobility within Australia and across the Tasman? Are such differences warranted because, for example, individual jurisdictions have to address significantly different risks and community expectations?

As stated above, the NZRAB believes that accountability is a key element of occupational licensing and for that reason where the public interest is involved the entity that enforces accountability and the rules and requirements against which the practitioner can be held to account have to be local.

28) What, if anything, should be done to reduce barriers to labour mobility caused by different laws for the 'manner of carrying on' an occupation, and what would be the costs and benefits of doing so?

As stated above, the NZRAB believes that for the provision of architectural services this is a non-issue.

29) To what extent could cross-border provision of services by particular occupations be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement?

The NZRAB has no view on how civil disputes between practitioners and clients from opposite sides of the Tasman can best be solved, but the NZRAB is clear in regard to its answer to question 27 above.

38) How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?

The NZRAB imposes no special conditions on Australian architects who have become registered in New Zealand. The continuing registration and accountability requirements of the Registered Architects Act 2005 and the Registered Architects Rules 2006 allow for no subsets of architects.

41) Should people registered under mutual recognition be subject to the same ongoing requirements as other licence holders in a jurisdiction? Why or why not?

In the NZRAB's view, yes. This is because an Australian architect who becomes registered in New Zealand is from that point forward a New Zealand architect entitled to use the title "Registered Architect" in New Zealand and to practise as such. Whatever procedures and requirements are in place to ensure that New Zealand Architects continue to be competent and are accountable need to apply to these "New Zealand" architects as much as to other New Zealand architects. An architect's place of origin in this regard is irrelevant.

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? If so, what is the extent of the problem and is it a systemic issue affecting an entire occupation? Is there evidence of any benefits, such as regulatory competition and innovation between jurisdictions?

Not in relation to architects. The initial registration assessment procedures in New Zealand and Australia are different, but the NZRAB has seen no evidence to suggest that the Australian architects becoming registered in New Zealand are in any specific way a risk to the New Zealand public.

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 NZRAB has a cordial and active relationship with the Architects Accreditation Council of Australia (AACA). The NZRAB uses the same procedures as Australia for assessing and recognising academic qualifications for initial registration and shares the same set of competencies for architects when undertaking initial registration assessments. Regular face-to-face liaison occurs.

46) Is there a strong case for adopting automatic mutual recognition more widely? What would be the implications for the MRA and TTMRA?

For the accountability reasons cited above, the NZRAB is opposed to automatic mutual recognition as described in the discussion document

47) What are the advantages and disadvantages of the 'external equivalence' model being considered by the Council for the Australian Federation?

As per question 46

48) What are the strengths and weaknesses of the different models of automatic mutual recognition adopted by New South Wales and Queensland for electrical occupations? Would it be desirable to expand either of these approaches to other occupations and jurisdictions? Are there better models of automatic mutual recognition in place elsewhere?

As per question 46

49) What additional issues would need to be considered for a trans-Tasman model of automatic mutual recognition? Would there be a net benefit from such a model? To what extent would it be facilitated by the Agreement on Trans-Tasman

Court Proceedings and Regulatory Enforcement? Are there specific occupations particularly suited to the model? What are the implications for the TTMRA?

As per question 46

63) Have there been implications for the TTMRA from Australia or New Zealand entering bilateral, regional and multilateral trade agreements in recent years? Are there examples of inferior quality goods or less qualified persons entering either country as a result of the interaction between the TTMRA and the trade agreements?

Via the NZRAB New Zealand is a participant in the APEC Architect Project which allows for bilateral arrangements to be negotiated between registration authorities to allow for special fast-track cross-border registration procedures for senior architects. Australia is also a participating economy. Because of the TTMRA, an APEC Architect from, for example, Japan who becomes registered in Australia is then immediately entitled to registration in New Zealand. The same would apply for example to a Singapore APEC Architect that becomes registered in New Zealand and then would be entitled to registration in Australia. Potentially this could cause concern, but it is being managed by the NZRAB and the AACA jointly negotiating trilateral APEC Architect mutual recognition arrangements. Currently there are no MRAs that Australia has and New Zealand doesn't have, and vice versa, which mitigates this potential problem.