AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY SUBMISSION TO PRODUCTIVITY COMMISSION REVIEW INTO MUTUAL RECOGNITION ARRANGEMENT AND TRANS-TASMAN MUTUAL RECOGNITION AGREEMENT

Introduction

The Australian Communications and Media Authority (ACMA) welcomes this opportunity to make a submission to the Productivity Commission's Review into the Mutual Recognition Arrangement (MRA) and Trans-Tasman Mutual Recognition Agreement (TTMRA).

The Australian Communications and Media Authority (ACMA) and the Ministry of Business, Innovation and Employment (MBIE) in New Zealand have responsibility for electromagnetic compatibility (EMC) and radiocommunications matters in their respective countries. The ACMA (and its predecessor, the Australian Communications Authority) has worked closely with MBIE (and its predecessor, the Ministry of Economic Development (MED)) to promote harmonisation of radiocommunications and EMC regulatory arrangements. In 2003 the ACA and MED signed a memorandum of understanding, under which the parties agreed to undertake certain administrative activities designed to promote the objectives of the TTMRA.

Harmonisation of Australian and New Zealand regulatory arrangements is an important precursor to the supply of radiocommunications devices under the TTMRA. In the absence of harmonisation, the supply of devices that are compliant with the requirements of one country into another country would almost certainly result in interference being caused to existing radiocommunications services.

As noted in the ACMA's 2009 submission to the Productivity Commission review into the MRA and TTMRA, Australia and New Zealand (through the countries' respective spectrum regulators) have made considerable progress in harmonising radiocommunications and EMC standards and regulatory arrangements. In this submission, the ACMA cited several examples of harmonisation achieved under the TTMRA including:

- use of a common compliance mark ('C-tick' and now 'RCM') for use in both Australia and New Zealand to illustrate compliance;
- harmonisation of EMC technical requirements between Australia and New Zealand (i.e. a common set of EMC technical standards);
- substantial harmonisation of EMC regulatory requirements;
- partial harmonisation of radiocommunications technical standards and regulatory arrangements;
- participation of New Zealand representatives in Australian (Standards Australia) technical committees developing radiocommunications and EMC technical standards;
- regular cooperation (through bilateral meetings and ongoing consultation)

between the ACMA and MED to identify further opportunities for harmonisation, and to prevent significant differences in EMC regulations occurring as the regimes develop.

The few remaining variations between the respective EMC regulatory arrangements are minor, relate to the different legislative origins of the regulatory arrangements and do not have a tangible effect on trade between Australia and New Zealand. A number of standards for certain radiocommunications devices have not been harmonised. This is a consequence of historical differences in the allocation and use of radiocommunications spectrum between Australia and New Zealand. This issue is discussed further below.

Comments on Issues Paper

This submission focuses on questions Q10 and Q11 posed in the Issues Paper:

(Q10) What are the costs and benefits of maintaining the permanent exemption for road vehicles and radiocommunication devices?

The ACMA notes that in the absence of full harmonisation, suppliers of non-harmonised devices would need to comply with different technical requirements to supply those devices in Australia and New Zealand. There may be additional compliance costs associated with supplying a particular device into both markets, as such a device would need to comply with both Australian and New Zealand requirements, or alternatively different variants of the device could be supplied into Australia and New Zealand. While the ACMA has not attempted to quantify the costs of non-harmonisation, the costs are likely to depend on the nature of the device proposed for supply, and the extent of deviation between the different technical requirements in the respective countries.

In developing the TTMRA the parties recognised that in a number of areas, including radiocommunications, there were different standards and regulatory requirements affecting trade. The radiocommunications product categories not currently harmonised (and which continue to be the subject of discussions between ACMA and MBIE) are:

- Personal Handyphone Services (PHS);
- certain short-range devices;
- digital modulation transmitters (spread spectrum devices);
- high frequency citizen band (HF CB);
- in-shore boating radio services;

- cordless telephones using the medium and high frequency (MF/HF) bands.

Of the product categories listed above, it is unlikely that licensing arrangements permitting the use of in-shore boating radio services will be established in New Zealand. PHS and cordless telephones using the MF/HF bands are regarded by both Australia and New Zealand as technologies that are likely to become obsolete in the near term, and not considered to be a valuable focus of harmonisation activity. The ACMA considers that the prospect for harmonisation in relation to the remaining categories of HF CB and short range devices (which now includes spread spectrum devices) to be poor due to historical differences between Australia and New Zealand in the spectrum bands allocated for use of such devices.

In 2010, the Government converted all remaining areas previously subject to special exemptions into permanent exemptions, while allowing further work towards mutual recognition or harmonisation to continue in the areas previously subject to special exemption. The ACMA notes that the administrative burden of rolling over special exemptions every 12 months has been eliminated as a result of this change. Therefore, any removal of the permanent exemption is likely to incur additional administrative costs on the part of both the ACMA and MBIE.

The ACMA considers that continuation of the current permanent exemption for radiocommunications devices is warranted due to the substantive historical differences between Australian and New Zealand spectrum allocations that underpin the current non-harmonised standards, and the negligible economic and trading benefits that would be achieved by further harmonisation (where it is practicably feasible).

The ACMA also considers that the previous requirement under the special exemption to report regularly on the progress toward full harmonisation of radiocommunications had little practical value when both parties (despite the parties' support for harmonisation) are of the opinion that the benefits of full harmonisation would not be outweighed by the costs. The ACMA has also not been approached by suppliers of non-harmonised products seeking harmonisation of the relevant technical requirements.

The ACMA recognises the need to ensure ongoing efforts to harmonise radiocommunications standards that may be developed in the future. Following the implementation of the permanent exemption for radiocommunications devices in 2010, the ACMA has continued to work with MBIE to develop harmonised approaches to spectrum allocation and usage. This has been undertaken both bilaterally and multilaterally, as part of regional preparations and the trans-region Spectrum Regulators' Forum. The ACMA also notes that Australia and New Zealand both align with ITU requirements in developing national spectrum plans. This will promote harmonisation of standards that apply to future product categories and trans-Tasman trade in those products.

(Q11) What are the barriers to Australia and New Zealand achieving mutual recognition or harmonisation for road vehicles and radiocommunication devices? How can these barriers be addressed?

For non-harmonised product categories, the spectrum bands in which devices are permitted to operate differ between Australia and New Zealand. The differences between the spectrum bands render it impracticable to develop harmonised technical standards for such devices without harmonisation of the relevant spectrum bands.

While it is possible (in theory) that the Australian and New Zealand spectrum plans could be harmonised, the economic benefits of such spectrum harmonisation (including the trade of relevant goods between Australia and New Zealand) would be negligible compared to the significant costs of achieving spectrum harmonisation.