The New Zealand Government Submission to the Australian Productivity Commission on the 2014 Review of the Trans-Tasman Mutual Recognition Arrangement

New Zealand Government

1. Introduction: the TTMRA is important to New Zealand

The New Zealand government welcomes the opportunity to submit to the Australian Productivity Commission (the Commission) on its January 2015 Issues Paper *Mutual Recognition Schemes*. New Zealand's comments are limited to the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

The TTMRA is important to New Zealand's broader economic objectives. The New Zealand government remains committed to pursuing the long-term vision of creating a seamless trans-Tasman business environment – a single economic market (SEM).

New Zealand and Australia are important markets for each other. Australia is New Zealand's largest trading partner, taking over 20% of all New Zealand exports. In comparison, New Zealand is Australia's 6th largest overall trading partner, but its largest market for manufactured products and 6th largest export destination (goods and services). The Australia New Zealand Closer Economic Relations Trade Agreement (CER) has been a significant contributor to these statistics. CER has been described by the WTO as "the world's most comprehensive, effective and mutually compatible free trade agreement" and is constantly revised to keep it up to date and relevant. There is substantial ambition to further liberalise the relationship for the benefit of both countries.

While CER is the lynchpin of the economic relationship, a number of instruments have been put in place to contribute to achieving the goal of an SEM. The work programme for SEM focuses on identifying innovative actions that will reduce barriers, lower transaction costs, and make it as easy for New Zealanders to do business in Australia as it is to do business in New Zealand (and vice versa).

The TTMRA makes an important contribution to our SEM aspirations by addressing behind the border barriers to the movement of goods and skilled people. It is unique amongst mutual recognition instruments in that it is broad, conceptually simple and works by recognising regulatory outcomes rather than trying to align regulatory processes and rules.

The Commission's January 2009 Research Report *Review of Mutual Recognition Schemes* confirmed that the TTMRA increased the movement of goods and registered workers in the trans-Tasman region. The Commission found:

- in relation to goods, over 80 percent of merchandise trade between New Zealand and Australia is covered by mutual recognition
- in relation to occupations, mutual recognition accounted for around 15 percent of new registrations in Australia and around three percent in New Zealand.

This submission is divided into the following sections:

- Main themes
- Goods
- Occupations
- Other matters.

2. Main themes in New Zealand's submission

Broad coverage is a strength of the TTMRA

In New Zealand's view, the TTMRA contributes to New Zealand's economic and regulatory objectives due to its broad coverage. There are few exclusions and exemptions. For this reason, any new exclusion or exemption could create a significant precedent. New Zealand would therefore need compelling reasons to support any move to reduce the coverage of the TTMRA. In turn, New Zealand would, in principle, support broadening the coverage of the TTMRA, although any particular proposal would need to be evaluated on its merits.

New Zealand remains open to removing existing permanent exemptions in the future or using different avenues to remove or reduce barriers to the movement of goods or registered persons. We suggest the Cross-Jurisdictional Review Forum (CJR Forum) could have a leadership role in monitoring whether permanent exemptions can be removed or reduced.

The TTMRA encourages regulators and policy makers to cooperate

The TTMRA is a powerful driver of regulatory cooperation, in addition to facilitating the movement of goods and labour in registered occupations. Jurisdictions are effectively compelled to consider the regulatory regimes of other participating jurisdictions, due to the regulatory competition effects created by the TTMRA.

While the TTMRA works by treating the outcomes of various regulatory regimes as equivalent, the process through which an outcome is achieved can differ. If jurisdictions are concerned about the process or the outcomes reached in other jurisdictions, they are encouraged to engage with the regulators there. In turn, jurisdictions may find they are over-regulating after comparing the process or outcome of their regimes with those of others. Attempts to set the regulatory bar too high are tempered by the operation of the TTMRA mutual recognition principles.

Through encouraging dialogue and comparison, the TTMRA is a powerful driver toward regulatory efficiency. The best results will be achieved if policy makers and regulators consider the implications of the TTMRA and the opportunities it creates early in the policy development process. New Zealand has incorporated a Preliminary Impact and Risk Assessment early in its regulatory impact assessment process that provides a trigger for this to occur.

The TTMRA works well where regulators and policy makers cooperate across jurisdictions. Some successful examples of this cooperation are detailed in subsequent sections. We want to see levels of cooperation intensify as this will help ensure the ambition of the TTMRA is realised.

Cross-border service provision presents an opportunity to enhance the TTMRA

While we should zealously preserve the existing broad coverage and simplicity of the TTMRA, New Zealand also supports identifying opportunities where the operation of the TTMRA could be extended to accommodate changing practice. One such example is cross-border service provision. People in some registered occupations can now easily provide their services across borders without a physical presence. Others may be operating in multiple jurisdictions. However, the TTMRA model may be a barrier to these practices. We would welcome early analysis of the scope of any problem, the occupations most affected and potential solutions, including reliance on a single registration.

The recently implemented Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement would, in our view, make the option of relying on a single registration more feasible in a trans-Tasman context. The Agreement makes civil litigation much easier between trans-Tasman parties and would also allow regulatory sanctions imposed in one country to be enforced in the other.

3. Goods

Exemptions and exclusions

New Zealand supports, in principle, the expansion of coverage of the TTMRA, though any specific proposals would need to be considered on their merits. We would also resist reductions in coverage in the absence of compelling reasons. Since the TTMRA was first implemented, New Zealand has worked collaboratively with Australia to increase the coverage through reducing the scope of existing exemptions.

New Zealand has, however, found that bringing some areas within the scope of mutual recognition is not practical due, for example, to different environmental conditions. However, in these instances, New Zealand and Australia can generally cooperate through other avenues to achieve regulatory outcomes that minimise barriers to the movement of goods and registered persons to the most practicable degree.

Some comments on areas in which there are exemptions are provided below.

Permanent exemptions

Risk foods

The New Zealand and Australian food sectors are so integrated today that the trans-Tasman market for food has become almost an extension of the domestic market of both countries. In the year ending June 2014, New Zealand's total food and beverage exports to Australia totalled NZ$2.7 billion, including wine, dairy products, other processed food (including baked goods and confectionary) and seafood. New Zealand's food and beverage imports from Australia for the same period totalled NZ$1.5 billion and included oils, fats and cereals.

Risk foods are those assessed by each country as posing a food safety risk and are therefore subject to additional control measures (e.g. testing). Since 2009, the Ministry of Primary Industries (MPI) has worked with Food Standards Australia New Zealand and the Australian Department of Agriculture to reduce the number of foods on the risk food list under the TTMRA. This work was undertaken in response to the Commission's 2009 Research Report *Review of Mutual Recognition Schemes*.

As a result of this work, New Zealand has removed the requirements for food safety import inspection on a range of risk foods exported from Australia to New Zealand. New Zealand now has two categories: beef and beef products (for BSE risk), and bivalve molluscan shellfish. Australia has five categories: beef and beef products (for BSE risk), cassava chips, cooked pig meat, raw milk cheese, and brown seaweed.

New Zealand is open to doing the technical work required to extend mutual recognition to products covered by New Zealand's risk foods exemptions (for example, bivalve molluscan shellfish) on request from Australia. However, we believe it is more valuable to both countries to focus efforts on risk assessments for products subject to quarantine and biosecurity regulations. This constitutes a much wider category of products, and some products on the risk food list are currently unable to be exported due to quarantine requirements (e.g. pig meat).

New Zealand supported the reclassification of the remaining risk food exemptions from ‘special’ to ‘permanent’, and this enables resources to be focused on those matters most likely to reduce barriers to trade.

Quarantine/biosecurity

The TTMRA exempts quarantine/biosecurity laws to the extent they do not amount to an “arbitrary or unjustifiable discrimination or a disguised restriction on trade between Australia and New Zealand”. The different quarantine/biosecurity measures reflect the different environmental conditions, and different disease and pest status of each country. Australia and New Zealand regulators agree on the need to maintain the permanent exemption in the TTMRA for quarantine and biosecurity laws, but there is significant scope to reduce barriers to trade in this area through regulatory cooperation.

There is a high level of regulatory cooperation between MPI and the Australian Department of Agriculture facilitated through the Consultative Group on Biosecurity Cooperation (CGBC). The CGBC has a particular focus on identifying differences in approaches to managing biosecurity risks that impede trade, and harmonising approaches where possible to facilitate trade. The CGBC, established in 1999, usually meets annually to agree, discuss and provide strategic direction to programmes of work that are implemented by technical working groups. These include animal health, plant health and operations. The CGBC is co-chaired by a senior official from each country and reports to the relevant Ministers in Australia and New Zealand.

Some examples where regulatory cooperation has yielded benefits to date include:

- New Zealand and Australia share a common health status as free from rabies, and have harmonised regulatory controls and sharing of risk assessments for the import of pet cats and dogs from third countries.
- Similarly, for horses and equine influenza, New Zealand and Australia allow for shared transportation during imports of horse consignments to both countries to manage third country biosecurity risks.
- MPI and the Australian Department of Agriculture share research findings on heat inactivation of biosecurity pathogens to support common requirements for imports from third countries e.g. Infectious Bursal Disease in poultry meat.

More recently, the CGBC has identified some ‘low hanging fruit’ that can be progressed in the short term. One example is to simplify bilateral trade and onwards certification.

Agricultural chemicals and veterinary medicines (ACVM)

While both New Zealand and Australia recognise that our different environmental, production and use conditions mean that the permanent exemption in TTMRA for ACVM should remain, there is scope to reduce barriers in this area through regulatory cooperation.

To maximise cooperation, the New Zealand and Australian regulators have signed a Memorandum of Understanding (MoU) and, flowing from that, a five-year work plan. The MoU’s objective is to remove barriers by recognising systems (including registration) and sharing information. The key to this work has been maintaining a positive approach to recognition, i.e. what can be aligned as opposed to what cannot. Both regulators are currently working on updating the MoU to further enhance cooperation.

The result is significant efficiency gains with relatively simple arrangements. For example, New Zealand unilaterally recognises the Australian risk assessment system for certain product type registrations as having the equivalent outcome to that delivered by New Zealand's requirements. This operates in a way that still allows New Zealand to undertake its own risk management.

This simplifies the process for registration of these products in New Zealand and reduces the time and cost for industry, thereby enhancing the availability of products for the sector. Achieving reciprocity for this arrangement would further increase the economic benefits without reducing either country's appropriate level of protection. Other areas that could be advanced include the alignment of data package requirements for agricultural and veterinary products.

Hazardous substances

When TTMRA was first agreed hazardous substances (including dangerous goods and industrial chemicals) had a special exemption as the chemicals regulatory regimes in the different jurisdictions could not be easily harmonised. The Australian regulatory system was split between several laws and regulators at the Commonwealth level and then implemented by separate state laws. These differed from the *Hazardous Substances and New Organisms Act* introduced in New Zealand in 2001 which had its own unique features. The intention was that, by way of annual work programmes, the regimes would be reviewed with an aim of enabling mutual recognition.

In 2001, New Zealand adopted a regime involving chemical classifications based on the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The expectation was that the different Australian regimes would also adopt systems based on the GHS. This has now happened for workplace hazardous substances in Australia. Although the exemption was made permanent in 2010, the intention was that it would be reviewed once chemicals regulation in the various Australian states was harmonised with the GHS. However, no work programme has been set up to facilitate or oversee this and harmonisation or mutual recognition of chemicals and hazardous substances has 'slipped off the radar'.

Australia now has model health and safety law and rules based on the GHS for workplace hazardous substances. This is in the process of being implemented into state law in most of the Australian states. New Zealand is also reforming its health and safety at work regime and its hazardous substances regulations in reforms relating to the establishment of Worksafe NZ. The Health and Safety Reform Bill is before Parliament and draws extensively on the model Australian law. Once the reforms are bedded in in New Zealand and in the various Australian states, it should be possible to look at removing or reducing the scope of the permanent exemption. However, it would make sense for the New Zealand and Australian implementing legislation and any regulations to be examined prior to final enactment or promulgation to ensure that there are no unnecessary impediments to the movement of hazardous substances between Australia and New Zealand.

We therefore consider there would be benefit in New Zealand and Australia formally examining harmonisation of hazardous substances regulation in the immediate future so as to facilitate removal of the current permanent exemption leading to mutual recognition.

Ozone protection legislation

New Zealand believes the exemption for ozone protection legislation is currently appropriate. The reason for this is the phase-out programmes for ozone depleting substances may vary between Australia and New Zealand. However, given New Zealand's commitment to removing barriers to trade, we would welcome the opportunity to review this decision in the coming years, once these phase-out programmes are complete.

Road vehicles

The current permanent exemption for road vehicles remains necessary due to the areas where there are differences in regulatory settings between New Zealand and Australia. These include frontal impact and emission standards, and the treatment of used imported vehicles. In addition New Zealand accepts US and EU standards for motor vehicles, whereas Australia relies on certification to Australian Design Rules.

New Zealand is open to working with Australia to reduce the scope of this exemption over time.

Radio communications

New Zealand's radio spectrum management regulator aligns spectrum requirements and performance standards with the International Telecommunications Union global framework. This makes spectrum use simpler and cheaper for businesses and consumers, and management easier for the regulator. However, there are differences in spectrum use between nations, arising from historical technological and economic factors, which limit the degree of practicable harmonisation. These differences, which are embedded in communications infrastructures, would require massive expenditure on technology change and major legislative adjustment to eliminate, even between countries as closely aligned as Australia and New Zealand. For this reason, removal of the permanent TTMRA exemption for radio transmitting products is not feasible in the short to medium term.

In the longer term, technology progress and increasing globalisation of radio products are enabling step advances in harmonisation of particular radio services and products. The spectrum regulators on both sides of the Tasman are working closely together to put in place common requirements as it becomes possible to do so. An ultimate goal is to achieve harmonisation for radio products in the same manner as has been achieved for the electromagnetic compatibility of electrical and electronic products.

Exclusions

Intellectual property

Current efforts between New Zealand and Australia have focused on alignment, where appropriate, of registration procedures and examination practices rather than of intellectual property laws themselves. The objective is to reduce regulatory and business compliance costs associated with registering trade marks and applying for the grant of patents in Australia and New Zealand.

However, we consider the exclusion of intellectual property from the TTMRA should remain for the time being. The reasons for this include:

The nature of intellectual property rights

The policy objectives for granting intellectual property rights (IP rights) are different from those for regulations that control the manufacture, distribution and sale of goods. IP rights are concerned with encouraging the development of creations and innovations by rewarding creators and innovators with short term monopolies over the manufacture and sale of their creations and innovations. They are not directed towards (for example) ensuring minimum quality or safety standards that are unlikely to require a materially different approach in each jurisdiction. Optimal IP regulation will vary from country to country as well as over time.

Material differences in our laws

There are material differences between the intellectual property laws of Australia and New Zealand that render mutual recognition impractical and undesirable. These differences have evolved because of different domestic policy objectives. For example, Australia allows for the patenting of methods of medical treatment, whereas New Zealand has decided against doing so after balancing intellectual property, public health and budget objectives.

Disparity in economic size

The disparity in size between the Australian and New Zealand economies means that Australia registers and grants far more IP rights compared to New Zealand. For example, Australia grants around five times as many patents as New Zealand. A significant increase in the number of patents granted in New Zealand would have an impact on the ability of New Zealand firms to innovate.

The scope of intellectual property rights

The territorial scope of IP rights and the ‘first in time, first in right’ principle do not lend themselves to mutual recognition. Different businesses can and do own IP rights in Australia compared to New Zealand, and vice versa. It is possible for different businesses to operate in Australia and New Zealand and own the same IP rights, without any conflicts arising over the ownership and use of the IP rights in question.

For example, a business in Perth can own and use the same or similar trade mark that is owned and used by an unrelated business in Invercargill. Provided the two businesses are not competing in the same market, there are no implications from their respective use of same or similar trade marks. Mutual recognition of trade mark rights could put Australian and New Zealand business unnecessarily into conflict with each other.

Constraints on the development and implementation of intellectual property policies

Mutual recognition of IP rights would also have a negative impact on the freedom each government has to develop and implement intellectual property policies to address specific domestic issues related to encouraging creativity and innovation. The alignment of intellectual property policies, and therefore laws, needs to be and is assessed on a case by case basis.

No demand for mutual recognition of IP rights

Perhaps most importantly, there does not appear to be any problem with the status quo that needs to be addressed. Businesses are not telling the Australian and New Zealand governments that the current exemption creates any barriers to trans-Tasman trade that mutual recognition should address.

Use of goods provisions

New Zealand is aware of concerns dating back to the Commission's 2003 review about barriers created by use of goods requirements. While we are not aware of any recent new examples, we would be interested in any evidence of continuing problems that the Commission may encounter during its current review. We would also welcome the Commission's views on the need for action and its assessment of the options for addressing use of goods requirements that are posing a barrier to the movement of goods.

Other issues – Intellectual Property Single Register Proposal

The Issues paper asks about barriers to implementing a single trans-Tasman register for trade marks and patents. The major barrier to implementing a single register (providing single trans-Tasman trade mark and patent rights) is the material differences between Australia and New Zealand patent and trade mark laws. These differences arise because of the different policies each country's laws seek to deliver. Implementing a single register would remove the ability for governments to tailor local IP laws to address local needs. The New Zealand and Australian governments would instead have to agree to common policy outcomes and criteria for registration.

To achieve a single register, the Australia and New Zealand governments would likely need to negotiate a suitable bilateral treaty setting out common policy objectives that the registers would deliver, and therefore registration criteria, and the registration procedures. Given the substantial difference in current domestic policy objectives and IP laws, this would be a complex, time consuming and costly process to undertake. Governments would also need to agree on the mechanics of the scheme, including who would administer the register and associated registration procedures. While these are not unsurmountable issues, they are nevertheless complex issues to resolve. It is not clear that the costs to implement a single register outweigh any potential benefits such registers would provide.

The need for a common trans-Tasman register is also less certain in light of the increasing world-wide uptake of the Paris Convention, Patent Co-operation Treaty, Madrid System of International Trade Mark Registration, and the rapid growth and uptake of the Patent Prosecution Highway (which Australia has joined). These have greater potential benefits for both New Zealand and Australian businesses wishing to protect their IP rights in both jurisdictions, and in other markets.

4. Occupations

Ministerial declarations

New Zealand is following with interest the recent work of the CJR Forum to update and streamline the Ministerial Declaration process under the Mutual Recognition Arrangement that operates within Australia. Once that process is complete, we will take the opportunity to consider the costs and benefits for New Zealand of participating in that process. We would therefore be interested in any information about the likely costs and benefits that the Commission identifies during the course of the current review.

Medical practitioners

The only exemption from the mutual recognition principle for occupations is medical practitioners. As this exemption has been in place for more than 15 years, we think it would be timely to revisit the reasons for the exemption to ensure they remain valid. We would therefore be interested in any information that the Commission may gather on this issue during the course of its review.

Legal profession

The current system for lawyers applying to practise in another jurisdiction under the TTMRA involves a two-step process. First the lawyer must be admitted in the relevant superior court and then they can apply for a practising certificate. For Australian lawyers looking to practise in New Zealand under the TTMRA, this means applying to be admitted in the New Zealand High Court. Once admitted, the lawyer can then apply for a practising certificate to be issued under the *Lawyers and Conveyancers Act 2006* (NZ). Both steps involve applications under the TTMRA legislation. An equivalent process applies to New Zealand lawyers wishing to practise in Australia. However, Australian lawyers wishing to practise inter-state within Australia under the MRA do not have to be admitted in the court in the host state in order to obtain registration there.

New Zealand is interested in exploring, in consultation with the judiciary, whether this additional procedural step in the TTMRA process could be removed. We acknowledge that changing these arrangements would require legislative amendment in each jurisdiction so this would be a longer term project. We are also interested in options for simplifying the process for lawyers wishing to practise remotely across the Tasman (see cross-border discussion below).

We would be interested in any information the Commission might gather relevant to this issue in its review process.

Cross border service provision and automatic registration

The New Zealand government encourages the Commission to consider whether and how the TTMRA could be adapted to make it easier to provide services across jurisdictional borders without a physical presence. We would also welcome consideration of ways the TTMRA could be adapted to reduce the cost of providing services in multiple jurisdictions, relying on a single registration.

In both these situations, the Trans-Tasman Proceedings regime which implements the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement could support reliance on a single registration or cross-border service provision. The regime makes it easier for consumers to seek redress against a service provider in the other country. It simplifies the process for bringing court proceedings and enforcing any resulting judgment on a trans-Tasman basis. The regime would also allow disciplinary sanctions to be enforced across the Tasman, through prescribing the relevant disciplinary tribunal and its orders. Fines imposed under criminal regulatory offences could also be enforced if the relevant offences were prescribed.

The occupations principle in the TTMRA works well for the traditional situation where a person moves permanently to work in a new (single) jurisdiction. However, it may be imposing unnecessary additional costs or acting as a barrier to people wanting to work in multiple jurisdictions, moving back and forth between jurisdictions as required. With the advent of the internet and services like Skype, some occupations may no longer require a physical presence in the jurisdiction in which services are to be provided. In that case, a person may wish to base themselves primarily in one jurisdiction but undertake work in multiple jurisdictions.

The current review provides a perfect opportunity to consider how the TTMRA could respond to these changes. The requirement to register (including paying registration fees) and comply with ongoing local requirements in each jurisdiction where a person wishes to practise their occupation is likely to be a barrier to providing those services for someone who does not fit the original TTMRA model.

The Trans-Tasman Proceedings regime opens the door to consider allowing some registered occupations to practise in multiple jurisdictions, including New Zealand, on the strength of a single registration. This could complement any automatic recognition arrangements that might be put in place in Australia. Automatic registration arrangements could even be extended to include New Zealand, once all the implications had been worked through.

Any move to allow services to be provided, particularly remotely, based on a single registration would require further consideration about what, if any, additional requirements should be imposed on the practitioner. This might need to be a mix of additional requirements in the practitioner’s home jurisdiction and other requirements in the host jurisdictions where services are being provided. The Trans-Tasman Proceedings regime would enable compliance with those requirements to be readily enforced across all the TTMRA jurisdictions.

We would welcome and encourage the Commission to consider, as mentioned in the Terms of Reference, what occupations might be suitable for inclusion in a cross-border scheme, the level of demand and views on the additional requirements that might be needed, in addition to the Trans-Tasman Proceedings regime, to make such an arrangement work well.

5. Other matters

Users' guide

New Zealand is aware of the limitations of the current Users' Guide. As a member of the CJR Forum, we led the revision of the 2006 Guide with an updated version released in mid-2014. This revision included changes necessary to ensure the Guide reflected developments since 2006, for example, removing the references to special exemptions and updating agency contact details.

In 2015 New Zealand will lead the development of a fully web-based TTMRA Users' Guide for the CJR Forum. The current Guide essentially mixes content relevant to regulators and policy makers with content relevant to the general public. The purpose of a fully web-based guide is to allow users from different audiences to efficiently access the information most relevant to them.

Other awareness issues

New Zealand agrees it is important to maintain and enhance awareness of the opportunities created and obligations imposed by the TTMRA for both:

- individuals and firms
- regulators and policy makers.

The TTMRA needs to be front of mind for these groups so it can deliver the benefits and operate as intended.

Individuals and firms

The proposed web-based update to the Users' Guide will contain information specifically targeted at individuals and firms. The update would aim to provide relevant and accessible information tailored to their needs.

The Ministry of Business, Innovation and Employment, which is responsible for the TTMRA in New Zealand, has also set up an enquiry point for anyone to submit their questions regarding the TTMRA. The TTMRA@mbie.govt.nz address receives around 20 enquiries each year from government and non-government correspondents.

Policy makers

Consideration of the TTMRA implications from major policy projects is embedded into New Zealand's regulatory impact analysis (RIA) process. A similar approach exists in Australia.

However, a recent development in New Zealand is that policy agencies complete a preliminary impact and risk assessment (PIRA) as early as possible in the policy process. The PIRA is intended to identify the potential range of risks and impacts the policy options may have so they can be fully investigated. As part of the PIRA template, agencies are encouraged to consider New Zealand's commitment toward a single economic market with Australia and to check with the Ministry of Business, Innovation and Employment about issues relevant to the TTMRA. This ensures both implications and opportunities for the TTMRA are identified early and can be more easily addressed as part of the policy process.

If there are TTMRA issues, they can be fully investigated through the development of a regulatory impact statement (RIS). In New Zealand, the RIS is a government agency document. It provides a summary of the agency's best advice to its Minister and to Cabinet on the problem definition, objectives, identification and analysis of the full range of practical options, and information on implementation arrangements. By contrast, the Cabinet paper presents the Minister's advice or recommendation to Cabinet.

The Regulatory Impact Analysis handbook, including the chapters pertaining to PIRA and RIS, is here: http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis.

New Zealand is unaware whether other jurisdictions have similar procedures to the PIRA integrated into their analogous RIA systems. The experience of some New Zealand regulators suggests that the early identification of potential TTMRA issues is very beneficial.

Overseas models

As noted earlier, the TTMRA is one of the most comprehensive mutual recognition arrangements between two countries. This is possible because of the depth of our historic, economic and political relationship. Apart from the EU which has its own mutual recognition arrangements, other mutual recognition arrangements are limited to the recognition of the technical competence of designated bodies in the exporting country to assess products for conformity with the rules, standards and procedures of the importing country. This means they are a less useful source of ideas for improving the TTMRA. Rather, New Zealand would suggest that given the unique nature of the TTMRA, any improvements will need to be designed specifically for the trans-Tasman environment.

We acknowledge the useful work the OECD has done on identifying different forms of international regulatory cooperation. New Zealand's experience, drawn from the trans-Tasman experience, is that international regulatory cooperation offers a spectrum of options. The spectrum ranges from unilateral cooperation (e.g. unilaterally adopting another country's rules), through informal cooperation arrangements (e.g. information sharing) to more formal forms of cooperation (e.g. mutual recognition, harmonisation or the creation of a single joint regime).

For every situation where regulatory cooperation between jurisdictions is contemplated, it is a matter of assessing the costs and benefits of the different cooperation options that could be used. Moving from mutual recognition to harmonisation, where countries adopt substantially the same rules or standards, raises issues including:

- the potential for parties to have a limited ability to determine their own policy and regulatory settings
- the process can be very resource intensive
- this may result in the "highest common denominator" leading to overregulation.

Relationship with other trade agreements

New Zealand is not aware of any specific, reliable evidence of examples of inferior goods or less qualified persons entering either country as a result of the interaction between the TTMRA and existing free trade agreements. As noted in the CJR Forum *Progress Report on responses to the 2009 review*, each country has domestic mechanisms to ensure the TTMRA and its obligations are taken into account in bilateral and regional trade negotiations.

WTO TBT Agreement and standards

New Zealand complies with its obligation under the World Trade Organization's Technical Barriers to Trade Agreement (WTO TBT Agreement) to use relevant international standards as a basis for its technical regulations, except where the international standard would be ineffective or an inappropriate means of fulfilling its legitimate objectives.

The Australian government recently adopted the principle that 'if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements … unless there is a good and demonstrable reason to do so'. In New Zealand's view, this principle reflects the expectations in the WTO TBT Agreement and is consistent with New Zealand practice.

The New Zealand government has introduced the Standards and Accreditation Bill to the New Zealand Parliament to implement new arrangements for the development and approval of New Zealand standards. Under the Bill, proposed standards would be considered for formal adoption by an independent statutory board, the New Zealand Standards Approval Board, in accordance with clear criteria. These criteria include the need to ensure that:

- New Zealand Standards do not unnecessarily duplicate the standards development work of other national or international standards organisations
- where a proposed New Zealand Standard is based on an international standard, there are good reasons for any differences between the New Zealand Standard and the international standard
- the proposed standard or modification will not create unnecessary obstacles to international trade and investment.

Standards development will be managed by a new, independent statutory officer, the New Zealand Standards Executive, located within the Ministry of Business, Innovation and Employment. The functions of the Standards Executive include responsibility for ensuring New Zealand remains engaged with the international standards community.

Joint trans-Tasman standards comprise 82 percent of the New Zealand standards catalogue. This means there is already a high level of consistency between Australia and New Zealand. The New Zealand standards system's longstanding collaborative relationships with Standards Australia and the international standards community will continue under the new arrangements once the Bill is passed.

Governance arrangements – the CJR Forum

In our experience, the TTMRA depends for its success on strong cooperative arrangements at all levels among the participating jurisdictions. The CJR Forum is a fundamental and central part of those cooperative arrangements. We therefore welcome the recent revitalisation of the CJR Forum and would support its continuation to act both formally and informally as a contact point for queries as well as the development of policy responses and addressing more substantive issues.

We are mindful that governments have limited resources so arrangements to support the operation of the TTMRA need to be flexible, responsive and cost effective. By and large, we think that is the case with the CJR Forum.