21 March 2003

Review of Mutual Recognition
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam

Review of the Mutual Recognition Agreement and the Trans Tasman Mutual Recognition Arrangement

The Business Licensing Authority of Victoria welcomes the opportunity to contribute to the Commission's review of the *Mutual Recognition Act* 1992 (MRA) and Trans Tasman Mutual Recognition Scheme (TTMR).

In summary, the Authority believes mutual recognition procedures should be revised to accommodate businesses conducted within regulated industries or occupations using a corporate entity.

BACKGROUND

The Authority is an independent statutory body responsible for licensing and registration functions in relation to credit providers, estate agents, travel agents, introduction agents, second-hand dealers, pawnbrokers, brothel and escort agency operators. In addition, the Authority has responsibility for determining permission applications from otherwise disqualified persons wishing to act as finance brokers. Attachment 1 outlines the number of licensees and registrants as at 30 June 2002.

Monitoring and enforcement of the regulatory schemes for the above mentioned occupations and industries are otherwise (ie apart from initial licensing and registration) the responsibility of Consumer Affairs Victoria (and to some extent Victoria Police).

No doubt owing to its estate agents' regulatory scheme being centred around the licensing of individuals and relatively high qualification barriers to entry, estate agents have been the only individuals licensed by the Authority under the MRA. The Authority is only aware of one individual being licensed by it under TTMR.

To assist you in further understanding the way in which the MRA is used by estate agents, I refer you to Attachment 2 which provides a breakdown by State origin of the

applicant and of licences granted since the commencement of the MRA and TTMR schemes. Attachment 2 also highlights some of the difficulties surrounding recognising "equivalence" with agent's representatives, as distinct from licensed estate agents.

The Authority is not aware of any issues of concern arising from the licensing of estate agents using the MRA.

CURRENT TRENDS AND ISSUES

Across the regulated industries and occupations for which the Authority has licensing and registration responsibility there is an increasing trend to:-

- undertake business/carry on an "occupation", using a corporate entity rather than as a sole trader or in partnership;

- conducting business outside of Victoria and in some instances, nationwide; eg: licensed corporate estate agents contracting with national property developers to undertake property management and sales functions across Australia;

- conducting business using e-commerce capability regardless of physical location eg: licensed corporate travel agents advertising travel deals throughout the country and a free-call number transferring all callers to Queensland.

Attachment 3 provides a breakdown of licensees across the estate agents, travel agent and motor car trader schemes according to their legal status as sole traders or corporations.

Notwithstanding these trends, corporations operating in licensed occupations and industries covered by the Authority cannot take advantage of the MRA or TTMR as they only apply to individuals.

Questions exist around the actual benefits gained from the resources and time delays involved in corporations needing to apply for a new licence/registration in each State they wish to operate in. Notwithstanding this, as the minimalist recognition procedures presently stand under Division 2 and 3 of Part 3 of the MRA, simply making these provisions applicable to corporations would not do justice to the consumer/public protection objectives underpinning each licensing scheme. That is, as the effective control of a licensed private corporation can easily alter with a change of directors and/or shareholders, the entity licensed in a second State under mutual recognition can be very different in nature and character to the entity originally licensed in the first State. A licensed corporate entity that since being originally licensed (and before applying under mutual recognition provisions in a second State) has changed the composition of its shareholding or directors without the necessity for "approval" within the first State, should therefore be able to be subjected to additional eligibility checks before being granted deemed licensee status. This should be at the discretion of the second State licensing authority.

In addition, any licensing regime that has financial viability as a key to its eligibility requirements, should trigger a power in the second State's licensing authority to investigate that particular aspect of the applicant's history, so as to minimise businesses endangering consumers by commencing new operations with insufficient operating capital or moving between States to evade financial obligations to consumers and others. The scheme the Authority particularly has in mind here is the licensing of motor car traders. Motor car traders are licensed in Victoria after assessment against a number of criteria, including financial viability. Financial viability is considered an important part of ensuring consumer obligations are met by traders. In addition, as the licensing scheme is underpinned by a Guarantee Fund that consumers can claim against, if a claim is to be admitted against a trader, adequate measures need to be in place to, if possible, secure repayment of monies paid out. Such measures can only be put in place if an assessment is first made of financial viability.

SUMMARY

In summary, providing licensing flexibility in the second State in relation to corporations would also necessarily entail revision of MRA and TTMR:

- Entitlement to registration provisions;
- Deeming and interim arrangement provisions; and
- Time allowed for consideration of applications.

Finally, the Authority also believes that if the mutual recognition schemes are expanded to include corporations, there is a need for resources to be committed to facilitating awareness raising amongst licensing authorities about mutual recognition and the actual features of each jurisdictions licensing procedures and regimes.

I am happy to discuss any aspect of this submission with review officers at any stage, by telephone (03) 9627 6302 or in person.

Yours sincerely

FIONA SMITH
Chairperson

Encl

Attachment 1

Business Licensing Authority

Number Of Licensees And Registrants Registered As At 30 June 2001 and 30 June 2002

	30 June 2001	**30 June 2002**
Estate Agents	5799	6096
Estate Agents Representatives	6578	7550
Credit Providers	642	649
Finance Brokers	0	0
Introduction Agents	73	62
Motor Car Traders	2195	2199
Prostitution Service Providers	169	170
Approved Brothel Managers	662	725
Exempt Prostitution Service Providers	1461	1523
Second-Hand Dealers and Pawnbrokers	6901	6886
Travel Agents	998	970
Total Numbers	25,478	26,830

Attachment 2

Business Licensing Authority

Estate Agents Act 1980 and Mutual Recognition

Estate Agent's Licences Issued under the *Mutual Recognition Act*

Total Number of Licences Issued since 1 June 1993	546
Number Issued During February 2003	7
Number of Licences Issued During 2002/2003	53

Estate Agents Licensed under *Mutual Recognition Act* since 1 July 1993 by State where First Licensed

New South Wales	309
ACT	12
Queensland	129
South Australia	60
Western Australia	23
Tasmania	11
Northern Territory	2

Agent's Representatives under *Mutual Recognition Act* since 1 July 1993 by State where First Licensed

New South Wales	133
Queensland	137
South Australia	11
Western Australia	33
Tasmania	16
Northern Territory	14

Licences Issued and Recognition of Agent's Representatives under the *Trans Tasman Mutual Recognition* Scheme

Licences granted 1

Agent's representatives recognised 21

A Practical Example of Difficulties Surrounding "Equivalence"

Agent's Representatives

Victoria does not require persons employed by licensed estate agents as their representatives to be licensed. Notwithstanding this, section 16 of the Act requires an employer to ensure the person they are about to employ is eligible to act as an agent's representative. The eligibility criteria includes satisfactory completion of an agent's representative course specified under Victorian regulation and undertaken at a TAFE college. The Authority is not involved in eligibility checks as this is the employers' responsibility under the Act.

Difficulties in administering the MRA and TTMR have been encountered when employers wishing to employ agent's representatives from other jurisdictions have queried the eligibility of a person who has not completed the Victorian agent's representatives course. The Authority has taken a pragmatic approach to these situations and sought to facilitate the spirit of the MRA and TTMR by issuing letters to agents indicating that an agent's representative course/licence from another jurisdiction satisfies this component of the eligibility criteria. The Authority only does this after checking the claimed registration in the original State/ Territory.

However, Victorian agent's representatives wishing to work in another jurisdiction may not be as easily accommodated given their inability to point to a licence/registration certificate from a Victorian licensing authority. Attempts to clarify this particular issue with our counterparts in other jurisdictions have not proved fruitful.

Attachment 3

Business Licensing Authority

Legal Status of Licensed Estate Agents, Travel Agents and Motor Car Traders as at 17 March 2003

Scheme	Sole Traders	Corporations	Partnerships
Estate Agents	547* (26%)	1568 (74%)	
Travel Agents	451 (21%)	1514 (69%)	229 (10%)
Motor Car Traders	260 (27%)	692 (73%)	

*includes the 27 agents who operate in the 13 partnerships