31 March, 2003

MRA Review
Productivity Commission
P.O. Box 80
Belconnen ACT 2616
Australia

The Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA)

Thank you for the opportunity to provide comments on the objectives and implementation issues surrounding the MRA and TTMRA.

The Institute of Chartered Accountants of New Zealand ('the Institute') supports the intent of the MRA and TTMRA i.e. to reduce the economic and social costs of different regulatory settings which may inhibit trade and labour mobility between jurisdictions. We do not have any robust qualitative information on the costs and benefits of the arrangements under review. Their has been a sharp increase in the number of Institute members trading in Australian i.e. from 1286 members to 1871 members between 1999 and 2002. However, in the absence of any clear counter-factual, whether this is a function of the TTMRA is unclear.

In considering these issues it is also important to remember that general legislation affects the way in which occupations are carried out, including the incentives on individuals behaviours. This includes the common law, the criminal law and generic consumer protection legislation e.g. the Fair Trading Act and the Consumer Guarantees Act in New Zealand.

Consultation with Institute members in Australia and New Zealand has identified some implementation issues, including difficulty in accessing clear information about what the arrangements trigger or not; and uncertainty about how 'deep' the arrangements go i.e. does it include regulatory exemptions triggered by the initial registration of domestic bodies/individuals e.g. the 'qualified accountant' exemption regulations under the Financial Services Reform Act (FSRA)?

In this regard, the costs and benefits of having a single information source identifying what access the current arrangements allow or not could be analysed.

One future policy area to consider is occupations' in different jurisdictions that have different forms of regulation i.e. other than licensing to protect consumers e.g. negative licensing or requiring providers of services to disclosure information that will assist consumers to assess the service. The TTMRA does not cover such situations. It would be useful to consider the costs and benefits of mutual recognition of occupational groups that are regulated in a different ways across jurisdictions e.g. tax agents and financial advisors.

If the costs do outweigh the benefits, ways of removing and/or limiting unnecessary costs for practitioners seeking to gain entry to practice in an occupation not requiring licensing in their 'home' jurisdiction could be explored. This could involve the agreement by the parties to the TTMRA to a set of principles, e.g. transparency, any additional requirements to practice should be the minimum required to address any identified gap in competence, that would govern this activity[1]. In this context, it is important to consider the nature of the incentives on industry parties and/or regulators who 'gate-keep' entry to practice an occupation.

A final example raised by members, while not directly relevant to the current TTMRA, concerns a perceived lack of transparency and consistency by regulators in assessing risk and granting exemptions. For example, the New Zealand Institute of Chartered Accountants is a prescribed body for the purposes of s 1280 (2) (a) (i) of the Corporations Act 2001, which facilitates our members auditing companies in Australia. However, to date the Institute has been unable to gain exemptions under FRSA regulation 7.1.29 for 'qualified accountant' status (which Australian accounting bodies were granted). This is, in part, due to the regulations being under review during 2002/03[2].

If the Institute does not obtain 'qualified accountant' status this could create additional direct costs for Institute members relative to members of Australian accounting bodies with the exemption, principally higher insurance costs in the short-term, and the additional cost of obtaining a separate license to provide 'financial advice'. This would seem to be counter to the benefits sought under the MRA and TTMRA: increasing the competitiveness of markets; increasing consumer choice; and decreasing industry costs.

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[1] Note the fit with the General Agreement on Trade in Services (GATS) would need to be considered.

[2]Note there is 'grandparenting' provision in the FRSA for all individuals providing financial advice who were resident in Australia on 11/3/02 until 11/3/04. However, this does not cover Institute members who have entered Australia post 11/3/02 or were resident in Australia before 11/3/02 but have changed work areas. Further, the Australian Treasury is currently consulting on a revised regulation 7.1.29 that would, if 'gazetted', exempt activities' not specific accounting bodies

More detailed analysis of what the welfare gains and losses would be for consumers in this type of situation are warranted. Further, consideration if the MRA and TTMRA is the appropriate vehicle to address these issues if analysis suggests that such situations have a negative and material impact on consumer welfare.

If you wish to discuss the issues raised further, please contact John Dickson, Manager – Government Relations and Special Projects, 64-04-4747810 or john_dickson@icanz.co.nz.

Regards,

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