Department of the Environment and Heritage

Mr Tony Hinton
Commissioner
MRA Review
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Hinton

I refer to the Circular of 17 January 2003, inviting written submissions to the Productivity Commission in relation to its Review of Mutual Recognition Arrangements.

Please find the Department's submission attached. It focuses on the Department's regulatory role under the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the protection for a range of species and ecological communities, including regulation of international movement of wildlife and wildlife products.

Should clarification on any aspect of the submission be required, please do not hesitate to contact me, or alternatively, Rachael Rangihaeata on (02) 6274 2279.

Yours sincerely

Gerard Early
First Assistant Secretary
Approvals and Wildlife Division

1 April 2003

1.0 Introduction

This submission is in response to the Productivity Commission's review of the Mutual Recognition Agreement between Australian States and Territories and the Trans Tasman Mutual Recognition Arrangement between Australia and New Zealand.

2.0 Overview of the Department's roles and responsibilities

The major roles and responsibilities of the Department of Environment and Heritage are to provide national leadership in the protection and conservation of the environment through the promotion, support and implementation of conservation and ecologically sustainable use of Australia's land, water, coasts and oceans. The department aims to operate a world class environmental assessment and approvals system and to identify, protect and conserve biodiversity under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The EPBC Act provides for the protection of matters of national environmental significance, including; World Heritage properties, wetlands of international importance (Ramsar wetlands), nationally threatened species and ecological communities, migratory species, nuclear actions and the Commonwealth marine environment. In addition, the Act provides protection for the environment in relation to proposals involving Commonwealth land and regulates the activities of Commonwealth agencies that might significantly affect the environment.

The EPBC Act also regulates the international movement of wildlife and wildlife products. In addition to protecting native species the EPBC Act also reinforces the efforts of other countries to protect their wildlife by regulating trade in those species identified under the Convention on International Trade and Endangered Species of Wild Fauna and Flora (CITES). The legislation is also designed to prevent the introduction of pests that could adversely affect the Australian environment.

The EPBC Act also provides protection for a range of species in Commonwealth areas and also important protected areas such as Commonwealth reserves.

This protection is achieved through a range of measures involving:

- nationally threatened species and ecological communities (incorporating the internationally recognised categories of vulnerable, endangered, critically endangered and extinct in the wild for species and critically endangered, endangered and vulnerable for ecological communities)
- listed migratory species
- whales and other cetaceans
- listed marine species
- protected species on certain Australian external territories
- species protected under trade provisions of the EPBC Act

- species contributing to the values of World Heritage and Ramsar Wetland properties.

The EPBC Act prohibits any action that is likely to have a significant impact on matters of national environmental significance without an approval from the Commonwealth Minister.

In addition to regulating wildlife trade, the EPBC Act also prohibits, without a permit, actions that involve the:

- killing, injuring, taking, trading, keeping, or moving a nationally listed threatened species or ecological community, listed migratory species or listed marine species within a Commonwealth area;

- the killing, injuring, taking, trading, keeping, moving or interfering with a cetacean within the Australian Whale Sanctuary, and in certain cases, the waters beyond the Sanctuary; and

- the killing, injuring or taking of a member of a protected species within the external territories of Christmas Island, Cocos (Keeling) Islands and the Coral Sea Islands.

3.0 Mutual Recognition Act

Section 6 of the Mutual Recognition Act (MRA) between Australian States and Territories provides that the MRA does not affect the operation of a law of the Commonwealth, and therefore the EPBC Act. As a consequence, Environment Australia has not experienced any concerns with regards to the operation of this Act.

4.0 Trans-Tasman Mutual Recognition Act

The Trans-Tasman Mutual Recognition Act currently excludes and exempts certain laws that provide for environmental protection, as specified under 'Schedule 1 – Exclusions' and 'Schedule 2 – Permanent exemptions', in particular in relation to laws protecting endangered species or implementing international obligations.

4.1 Endangered species

Schedule 2, item 2, of the TTMRA provides an exemption in relation to Australian laws concerning 'endangered species' to ensure regulatory protection of species from extinction.

Environment Australia considers that it would be appropriate to more closely reflect under the exemption relating to 'endangered species', the internationally recognised categories for threatened species and ecological communities as well as the broader range of species protected under the EPBC Act. Similarly, it would be appropriate to reflect in the exemption, as it relates to 'possession, sale, killing or capture', the actions that are regulated under the EPBC Act, namely 'killing, injuring, taking, trading, keeping, moving or interfering'.

4.2 Implementation of international obligations

The TTMRA excludes laws relating to the implementation of international obligations under item 1(d) of Schedule 1 and cites specific laws under Part 2, including the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (Wildlife Protection Act).

The Wildlife Protection Act was repealed on 11 January 2002 and new provisions regulating the international movement of wildlife and wildlife products were incorporated into the EPBC Act within Part 13A. The reference in Schedule 1 of the TTMRA to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (Wildlife Protection Act) should now be amended to refer to Part 13A of the EPBC Act.

Other provisions of the EPBC Act that should be included under Schedule 1 relate to laws implementing the Convention on Biological Diversity, Bonn Convention, the Agreements with Japan and China for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (known as JAMBA and CAMBA), Apia Convention, World Heritage Convention and Ramsar Convention.

End of Submission