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

Dear Mr Hinton

Thank you for your letter of 17 January 2003 inviting the Tasmanian Government to make a submission to your Inquiry into Mutual Recognition and in particular the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA).

In relation to the Tasmanian Government's views I provide the following comments:-

Occupational Registration

Teacher Registration

The Tasmanian *Teachers Registration Act 2000* (the Act) requires teachers to be registered or have a limited authority to teach before they can be employed to teach in any Tasmanian school. Under the Act, the Teachers Registration Board is required to make an assessment of an applicant's teaching qualifications and experience, *and* be satisfied that the applicant is of good character. I am advised that the Mutual Recognition process does not allow for these two matters to be considered in the same time frame.

Under the MRA and TTMRA the Board is obliged to register teachers from other jurisdictions regardless of whether their qualifications meet the standards required by the Board and a character/police check is effectively precluded. The Tasmanian Board considers this to be an unsatisfactory situation, particularly as Registration Boards in other jurisdictions do not automatically conduct a police check on all their registered teachers. Clearly the priority put on the safety of children and students has changed since 1993 and this shift should be taken into account as part of the Productivity Commission's review.

There is strong community support for teacher registration and it would be arguably in the public interest for teacher registration bodies to apply mutual recognition subject to being satisfied as to character.

Health Professionals

The experience in this area is that MRA is working well with applications for registration being dealt with quickly, assisting recruitment, and registration authorities are working cooperatively with applicants to further the aims of MRA. There is also evidence that some authorities are discounting application fees in the case of short term locums or post graduate study.

In some limited cases there may be scope to dispense with the need for registration altogether. Tasmania is currently putting in place exemptions for chiropractors and osteopaths registered elsewhere who are taking part in conferences or training during the course of which they may perform professional procedures. There are already exemptions for medical and nursing practitioners on 'mercy missions' or in organ retrieval teams. There may be scope for further relaxation of this kind.

One issue which may require further consideration as part of the review is the recognition of authorisations additional to primary registration.

In regard to the capacity to quarantine from the MRA practitioners engaged to work in an "area of need" (essentially only used by doctors at present), it may be worth considering extending this mechanism to other groups of health practitioners.

Exemptions

Quarantine Laws

The MRA and the TTMRA both provide exemptions (which differ slightly) for laws relating to quarantine as part of the *general laws relating to goods*, but the latter provides the broadest exemption. Tasmania supports the retention of the permanent exemption under both the MRA and the TTMRA in order to enable the continued operation of the quarantine system. Quarantine barrier controls prevent the introduction of unwanted pests and diseases that can harm the environment, destroy food production and prevent access to international markets.

As noted above, the exemptions for quarantine laws differ between the MRA and the TTMRA. The MRA contains a set of prescriptive threshold requirements, whilst the TTMRA provides a somewhat broader, general exemption in line with World Trade Organisation principles. The imposition of restrictive thresholds in the MRA has the capacity to impact on the right of a State or Territory to take independent precautionary quarantine action. Precautionary quarantine action is materially different from quarantine action taken against established threats in that there may be insufficient information to prove it is 'reasonably likely' that a 'substantial detrimental effect' will occur. Proving a substantial detrimental effect is one of the thresholds included in the MRA, but not included in the TTMRA.

The nature of the quarantine law exemption contained in the MRA may also impact on the capacity of governments to implement the arrangements for addressing regional differences in relation to import risk that were recently agreed to by the Primary Industries Ministerial Council. This regional approach to quarantine arrangements may result in precautionary quarantine action being undertaken in some jurisdictions, but not in others. Any such precautionary action would be subject to the nationally agreed process based upon the SPS Agreement made in the 1995 *Memorandum of Understanding on Animal and Plant Quarantine Measures*.

In light of the changed approach to quarantine arrangements outlined above and this State's longstanding concerns with the operation of the quarantine exemption, Tasmania considers that it would be appropriate to reassess the exemption contained in the MRA to ensure that it is consistent with nationally agreed quarantine policy.

Commercially Protected Fish

The MRA and the TTMRA both provide the same exemption, as part of the *specific laws relating to goods*, for those provisions of the *Living Marine Resources Management Act 1995* relating to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size. These species of fish are classified as 'Commercially Protected Fish' in the abovementioned legislation. Tasmania is the only jurisdiction with an exemption in relation to commercially protected fish. The exemption is required in order to protect Tasmanian commercial fish resources from inappropriate fishing and/or overfishing.

The following information on rock lobsters (crayfish) is provided by way of example. Minimum size limits for rock lobsters are based upon the size at which rock lobsters reach sexual maturity, which in turn enables egg production to be maintained thereby ensuring the future commercial viability of the fishery. Minimum size limits for rock lobster in Tasmania are 105 mm for females and 110 mm for males, whereas in South Australia the minimum size limit is 98 mm. The minimum size limits differ because rock lobsters reach sexual maturity at different sizes in Tasmania and South Australia. The exemption is necessary so that the Tasmanian minimum size limits can be enforced, in particular to prevent the illegal catch of rock lobsters that are smaller than the Tasmanian minimum size limits being passed off as South Australian rock lobster.

Tasmania not only supports the retention of this exemption in the interests of the protection of commercial fish resources, but recommends that it should be applied in a more generic sense covering all laws made for the purpose of ensuring the viability of commercially protected fisheries. This amendment would accommodate the future regulation of other species of fish where size limits vary from jurisdiction to jurisdiction.

Endangered Species

The MRA and the TTMRA both provide the same exemption, as part of the *general laws relating to goods*, for laws enacted or made substantially for the purpose of protecting a species or other class of animal from extinction. The status of a species, endangered or otherwise, can differ between jurisdictions, in part because geographic dispersion is a pertinent factor in determining the status of a species. The permanent

exemption under both the MRA and the TTMRA must be retained to ensure that measures can be put in place to protect endangered species.

Ozone Protection

Both the MRA and the TTMRA provide the same exemption, as part of the *specific laws relating to goods*, for ozone protection under the *Chlorofluorocarbons and Other Ozone Depleting Substances Control Act 1988*. This Act has now been repealed and replaced by Part 6 of the *Environmental Management and Pollution Control Act 1994*, which is dedicated to the control of ozone depleting substances, as defined in the Commonwealth *Ozone Protection Act 1989*. The Tasmanian legislation contains provisions which control trade in ozone depleting substances and the regulation of relevant occupations.

It is understood that legislation is essentially consistent across Australia, which in itself raises queries as to the ongoing need to retain the exemption in the MRA. Furthermore, I note that discussions between the Commonwealth and all States and Territories are being undertaken with a view to assessing the potential for the Commonwealth to take greater regulatory responsibility in this area. It is possible that new arrangements for the regulation of ozone depleting substances will be implemented prior to completion of the Inquiry into mutual recognition. Whilst there is little doubt that this area will continue to be regulated, it is suggested that an assessment be made regarding the ongoing need for this exemption.

Other Matters

An issue which may merit further consideration in relation to the TTMRA is that of facilitating enforcement between the two countries, for example where a serious accident occurs in an Australian State or Territory which was caused by a design or manufacturing defect in New Zealand.

No doubt the issue of use in the context of free movement of goods will be raised in a number of submissions. There is certainly no obvious reason why a person should be able to buy a piece of equipment designed or manufactured in another jurisdiction but have no corresponding right to use it. This issue should be considered in the context of Australian jurisdictions incorporating the NOHSC National Standard for Plant into their occupational health and safety legislation.

Thank you for providing the Tasmanian Government with the opportunity to provide comment to this Inquiry.

Yours sincerely

Linda Hornsey
SECRETARY

April 2003