JOINT REVIEW OF MUTUAL RECOGNITION AGREEMENT (DOMESTIC) 1992 (MRA) AND TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT 1996 (TTMRA)

QUEENSLAND GOVERNMENT SUBMISSION TO THE PRODUCTIVITY COMMISSION

Introduction

In early 2003, the Productivity Commission was requested to provide a research report in connection with the joint review of MRA and TTMRA. The Commission's findings will be presented to Australian Heads of Government and the New Zealand Prime Minister nine months from the date of commissioning. A Review Report with recommendations will then be prepared for presentation to Australian Heads of Government and the New Zealand Prime Minister.

The Queensland Government has an interest in the issues under review. This submission to the Productivity Commission is largely focused on three areas, namely:

- Hazardous Substances, Industrial Chemicals and Dangerous Goods;
- Occupational Licensing and Registration; and
- Product and Consumer Safety.

Recommendations

- That the review adopt a cautious approach in its consideration of any broadening of the TTMRA and that due attention is directed to the impacts that any broadening of the arrangement may have on the maintenance of reasonable regulatory standards.

- That consideration be given to suspend progress towards the application of TTMRA to chemicals until the Globally Harmonised System for the Classification and Labelling of Chemicals (GHS) is implemented in Australia;

- That the Dangerous Goods Safety Management Act 2001 be included in the list of 'Legislation Subject to Special Exemption' in TTMRA (Schedule 3 and Annex 2);

- That consideration be given to ways to raise the level of awareness of mutual recognition generally and to increase the level of communication between regulators across jurisdictions on mutual recognition matters particularly in relation to occupational licensing requirements and trade training;

- That the review take into account the national approach being pursued in relation to legal practice;

- That consideration be given to ways of addressing product safety standards, food standards and country of origin labelling issues under TTMRA;

- That permanent exemptions be continued in relation to vehicle regulations, indecent material, fireworks, firearms and gaming machines.

General Comment - TTMRA

New Zealand has previously expressed interest in the current review considering the broadening of the scope and objectives of the TTMRA. This is reflected in Section 2(c) of the Terms of Reference for the review.

In general terms, the Queensland Government is supportive of moves to enhance the efficiency and effectiveness of the TTMRA. Nevertheless, any consideration of broadening the scope of the arrangement should take into account the need to maintain a regulatory framework in Queensland which sets reasonable standards for say, product safety or occupational registration. The TTMRA should not be used to circumvent reasonable regulatory standards or to promote a 'lowest common denominator' approach to the establishment of standards. This is a matter which is commented on further in some of the following sections of this submission.

Accordingly, it is recommended that the review adopt a cautious approach in its consideration of any broadening of the TTMRA and that due attention is directed to the impacts any broadening of the arrangement may have on the maintenance of reasonable regulatory standards.

Hazardous Substances, Industrial Chemicals and Dangerous Goods

Although arising under the TTMRA, the resolution of the outstanding issues in the Hazardous Substances, Industrial Chemicals and Dangerous Goods Coordination Program has implications for the MRA.

The Fifth Joint Annual Report to COAG on the Chemicals Coordination Program of the TTMRA has outlined the difficulties and the extensive consultation needed for negotiation and harmonisation of legislation within Australia and New Zealand. Further work is needed to determine which aspects can be mutually recognised, harmonised or permanently exempted. The Report recommends that the special exemption status of the Program be extended for a further 12 months.

The Report also recommends that consideration should be given to the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS) and its implementation in Australia and New Zealand. The Terms of Reference for the review of the TTMRA by the Productivity Commission encompass the recommendation in the Report for examination of the coverage of the special exemption against the background of international work being pursued. Queensland supports these recommendations.

The GHS has been under development by the United Nations Economic Commission for Europe (UNECE) for over a decade and the final document was agreed to in December 2002. The GHS provides:

> harmonised criteria for classifying substances and mixtures according to their health, environmental and physical hazards; and
> harmonised hazard communication elements, including requirements for labelling and material safety data sheets.

The effect of the GHS will be to significantly change the basis upon which chemicals are classified and, in Australia, will remove the artificial distinction that has arisen historically between hazardous substances and dangerous goods.

Australia is yet to consider the adoption of GHS. However, there are several considerations that point towards its eventual adoption, not least of these being the potential for failure to adopt the GHS inhibiting chemicals trade with Australia's trading partners. There is also considerable momentum for adoption of the GHS within the body which would have the task of implementing it - the National Occupational Health and Safety Commission (NOHSC). The decision to adopt the GHS rests with COAG.

The question arises as to the appropriateness of continuing to pursue application of TTMRA to chemicals in view of the impending emergence of GHS, which has significant implications for all of Australia's trade in chemicals, while TTMRA has implications for bilateral trade with New Zealand only. It would appear appropriate to suspend the application of TTMRA to chemicals until the question of adoption of the GHS is dealt with by Australia.

For Queensland, the laws relating to the areas addressed by the Chemicals Coordination Program are listed in the TTMRA (Schedule 3 and Annex 2) as the *Workplace Health and Safety Act* 1995 and related Regulations and Compliance Standards.

It would be appropriate for the *Dangerous Goods Safety Management* (DGSM) *Act 2001* and Regulation to be listed in Schedule 3 and Annex 2 because it relates to dangerous goods management (legislation from other jurisdictions on this topic is so listed). Presumably, DGSM is absent from the list because TTMRA predates (1996) the DGSM legislation (2001).

Occupational Licensing and Registration

General

The Queensland Government suggests that the review consider ways to raise the level of awareness of mutual recognition generally and to increase the level of communication between regulators across jurisdictions on mutual recognition matters particularly in relation to occupational licensing requirements and trade training.

Occupational Licensing

- Unequal licensing requirements. The Queensland Government has noted the practice of persons travelling interstate with the purpose of seeking a licence in a jurisdiction whose licensing requirements are not stringent and returning to their home state with the intent of applying for a similar licence under the Mutual Recognition Agreement.

  This aids such people to overcome the licensing requirements in Queensland which is seeking to increase the professionalism and standing of licensed occupations. The Queensland Government observes that this is effectively a 'lowest common denominator' matter which is difficult to address under the MRA.

- Licensing prior to conviction. Concern has also been raised on another practice involving persons who move to another State/Territory when they are confronted with the prospect of court proceedings which could result in a disqualifying offence under the occupational licensing requirements of their home State. Their selfimposed transfer interstate coincides with an application in the next jurisdiction to obtain a similar licence under MRA. Should the first licence be suspended or cancelled, the licencee has the option of gainful employment under their new licence in the second State where the authorities may be unaware of the disqualification in the home jurisdiction. The Queensland Government observes that checking across jurisdictions does occur in relation to such issues but that the 'home' agency should be able to provide information to the 'new' licensing State or Territory as long as this does not breach privacy issues.

Trade and Paraprofessional Training

Frequently, New Zealand trade qualifications do not correspond in content to related trade training completed in Australia. Skills gaps have been identified in occupations such as cooking and hairdressing. Direction from Australian industry training advisory bodies has not been received advising which New Zealand qualifications are to be mutually recognised.

Trade/technical training completed in New Zealand does not necessarily satisfy Australian trade licensing requirements. For example, mutual recognition of trade training for the purpose of licensing in the electrical and construction industries currently only exists between Australian States and Territories.

Professional and paraprofessional mutual recognition of New Zealand qualifications currently exists for most professions at a national level. However, the same level of mutual recognition of New Zealand professional/paraprofessional registration/licensing does not exist at the State registration level (for example, radiation therapy).

Reasons given for non-compliance with the TTMRA relate to recognition arrangements of overseas qualified practitioners in New Zealand varying in quality and consistency compared to those of Australia.

It is suggested by the Queensland Government that:

- While in principle the TTMRA should enhance mobility between the two countries across industry and professions, there will be variations in content that will be peculiar to each country. This needs to be acknowledged and the additional requirement published to allow upskilling/bridging training to occur in the country of origin prior to migration. This would allow for enhanced mobility between the two countries and avoid the hardship of unemployment and retraining on arrival in the new country.

- Australian industry training advisory bodies (ITABs) and the New Zealand industry training organisations (ITOs) should coordinate training content in related trade occupations to allow for greater trade and workforce mobility.

- Trade licensing bodies which are common to both countries should coordinate licensing requirements to enhance mobility between licensed trade occupations.

- Professional registration authorities responsible for each State and Territory should outline clearly the qualifications and/or registration requirements that are mutually recognised to allow for a more transparent and equitable transition between the occupations in both countries.

Teachers

The operations of the MRA and TTMRA have had positive impacts on teacher recruitment by assisting in the removal of barriers that could prevent suitably qualified teachers from successfully applying for employment in Queensland. Registration with the Queensland Board of Teacher Registration (BTR) is compulsory for all persons employed, or seeking employment, as classroom teachers in private or State schools in Queensland. BTR currently recognises registration with a range of other jurisdictions and advises applicants of their eligibility under MRA/TTMRA. Recognised bodies are:

- New Zealand Teachers Council;
- Victorian Institute of Teaching;
- South Australian Teachers Registration Board; and
- Tasmanian Teachers Registration Board.

Gaming Employees

Mutual recognition has assisted in the recruitment of gaming industry employees. In particular, the Queensland Office of Gaming Regulation relies on the MRA to recognise certain Victorian Gaming Employee licences for the purpose of obtaining similar employment in Queensland.

Plumbers and Drainers

In Queensland, the Plumbers and Drainers Examination and Licensing Board (the Board) issues occupational licences for plumbers and drainers. The Board utilises the provisions of both the MRA and the TTMRA in relation to licensed plumbers and drainers from other States and Territories or New Zealand seeking to carry out their trade in Queensland.

Queensland operated a form of mutual recognition under the auspices of the Australian and New Zealand Reciprocity Association before the current arrangements came into force. The mutual recognition process under the two Acts has worked well and has enhanced workforce mobility through a simplified process for interstate or New Zealand plumbers to obtain a Queensland occupational licence.

There are slight differences between the various States and New Zealand in the definition of plumbing or drainage work for which an occupational licence is required, and therefore there are occasions where a full plumbers licence in one State or country does not mean a full licence in another jurisdiction. However, comparable licences allowing for comparable work are issued under mutual recognition principles.

Legal Practice

In Queensland, domestic and trans-Tasman mutual recognition principles apply in respect of admission as a solicitor or barrister of the Supreme Court and in respect of the issue of practising certificates for solicitors.

It is noted that the need to apply the principles of mutual recognition has been reduced in those States and Territories which have legislated to recognise practising certificates issued in other States and Territories. Queensland has previously announced its intention to legislate in this regard.

The need to apply mutual recognition principles would be further reduced under a draft Bill for national model laws for the regulation of the legal profession ("draft national models laws") being prepared for consideration by the Standing Committee of Attorneys-General (SCAG).

Under the draft national model laws:

- a practitioner could apply for a practising certificate on the basis of admission in any other State or Territory;
- practitioners would only have one practising certificate in the State or Territory where they have their principal place of practice.

Under the draft national models laws, applications for mutual recognition would be unnecessary. For New Zealand practitioners, applications for admission or practising certificates under mutual recognition would need to be made in one State or Territory only.

This would reduce the cost to applicants avoiding the need for multiple applications. Whether an amendment to the mutual recognition legislation or trans-Tasman mutual recognition legislation is needed to implement the draft national model laws will be considered by SCAG.

Where a New Zealand practitioner is entitled to practise law from the time of making an application for a practising certificate under trans-Tasman mutual recognition, there is concern that the clients dealing with the practitioner pending the issue of a practising certificate may not be protected by professional indemnity insurance or adequate cover by local standards.

Product and Consumer Safety

The Queensland Government wishes to highlight a number of issues for consideration by the review in relation to product and consumer safety, food standards and country of origin labelling.

- The extent to which the MRA and the TTMRA has provided a national market for goods?

  While this has been achieved to some extent, there are a few notable qualifications covered below. The State fair trading agencies and the Commonwealth have worked extremely hard to harmonise product safety standards and bans across Australia and New Zealand. Basically there is only one safety standard that is still subject to a temporary exemption from the TTMRA. This is for child restraints for motor vehicles. The New Zealand Standards are less stringent than for Australia whose regulators were not prepared to accept a lower standard for these products. The other standards are either harmonised across the nation and New Zealand (such as cots and toys) while others such as sunglasses and bunk beds are subject to the mutual recognition arrangements.

For goods that are subject to mutual recognition, this could result in those products that would not pass mandatory Australian Standards, being sold in Australia if they were made in or imported through New Zealand and were labelled as such. At this stage, suppliers appear to prefer adopting the most stringent standard available across Australia and New Zealand to ensure that their products can be supplied without complication. It appears that this practice is preferred over one where a supplier is tarnished with a negative image should it attempt to invoke the defence provided to it under mutual recognition principles.

Most suppliers simply elect not to take the risk. How long this situation can last before the first supplier veers away from the present practice is uncertain.

- The role of special exemptions.

The ability to maintain temporary special exemptions should be retained. This is often a last line of defence for regulators where an impasse has occurred. Most issues can be resolved via continued dialogue and the exemptions should be subject to review each year. The States and Territories should always have the fundamental ability to set standards in exceptional circumstances.

- Food Standards

New Zealand has a regulatory regime that has Food Standards, Drugs and Poisons Standards and a third element called 'Dietary Supplements'. Australia only has Food Standards and Drugs Standards.

Under the NZ dietary supplements regime, 'energy drinks' (eg Red Bull) with high levels of caffeine have been available for sale in NZ. Australian companies were prevented from producing such drinks under the Food Standards Code. NZ does not produce such products themselves but imports them from elsewhere and ships them into Australia. Consequently, the ANZ Food Regulation Ministerial Council has had to allow these caffeinated drinks to be produced in Australia to provide an equitable environment.

This matter has not been resolved by NZ. It continues to provide a loophole for products to enter Australia that are not approved under either country's therapeutic goods or food regulatory regimes.

• Country of Origin Labelling

Currently, there is a significant debate regarding country of origin labelling of food. Country of origin labelling requirements are a temporary measure in the Australian Food Standards Code but there appears to be considerable momentum for these requirements to be retained in Australia.

The NZ Government does not support such a system and may not agree to adhere to the labelling standard. Nevertheless, TTMRA will allow NZ products not labelled in accordance with the standard into Australia.

Other Issues

- Vehicle Regulations

The Queensland Government supports a permanent exemption for vehicle regulations under the TTMRA. NZ in general has lesser vehicle standards than Australia and the intention is to avoid the lowest common denominator. Accession by Australia to the 1958 United Nations Economic Commission for Europe (UNECE) Agreement will ultimately lead to harmonisation of Australian vehicle standards regulations with the UNECE Regulations. This also aligns Australia with Japan which is also a signatory to the 1958 agreement. Japan is the principal supplier of used vehicles into NZ.

- Queensland Classification of Films Act 1991 and Classification of Publications Act 1991

The Queensland Government supports the continuation of the permanent exemptions of both Acts. This legislation deals with restrictions on indecent material. The current permanent exemption is viewed by the Queensland Government as being an effective means of ensuring appropriate standards are maintained in respect to indecent material.

- Continuation of Other Permanent Exemptions

The Queensland Government supports the retention of the following permanent exemptions:

Firearms and other prohibited or offensive weapons - *Weapons Act* 1990 (Qld);
Fireworks - *Explosives Act* 1952 (Qld) (to the extent that it deals with fireworks);
Gaming machines - *Gaming Machine Act* 1991 (Qld).

The current permanent exemptions are viewed by the Queensland Government as being an effective means of ensuring appropriate standards are maintained in respect to firearms, fireworks and gaming machines.

- Industrial Hemp

In some jurisdictions, the production, sale and consumption of low tetrahydrocannabinol (THC) products is now permitted. The *Drugs Misuse Amendment Act 2002* (Qld) permanently established a legislative scheme for the commercial production of industrial cannabis sativa fibre and seed (also known as industrial hemp). Part 5B of the *Drugs Misuse Act 1986* (Qld) (DMA) provides for licences for plant breeders and commercial growers of fibre and seed. Each category of licence is determined by permitted levels of THC.

The licensing model clearly differentiates between approved participants in the commercial industrial hemp industry and illegal drug activities. Persons wishing to participate in this industry must apply for three-year licences and are scrutinised to ensure that they are suitable and eligible persons to participate in this industry. This includes criminal history checks and antecedent reports.

The Queensland Government suggests that the developing industry in low THC products be considered as part of the joint review. Specifically, whether the two agreements (and the related legislation) allow for low THC products from other jurisdictions to be sold in Queensland despite the fact that they may not meet the requirements of the DMA.

The clear intention of the Queensland legislative scheme is to tightly control this developing industry. Should mutual recognition arrangements permit the sale of low THC products that would not be authorised under Part 5B of the DMA, the Queensland Government would recommend consideration be given to making a permanent exemption that applies generally to dangerous drugs and the DMA. Such an approach would also ensure the intent of Queensland's legislative scheme is not further undermined by any future law reform in other jurisdictions relating to production and sale of low THC products.