Our ref: 12768

Mr Tony Hinton
Commissioner
MRA Review
Productivity Commission
PO Box 80
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Dear Mr Hinton

REVIEW OF MUTUAL RECOGNITION AGREEMENT AND TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT

Thank you for the opportunity to make a submission to the Productivity Commission Inquiry into the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) which has been initiated by the Council of Australian Governments.

The MRA

The application of the MRA in Western Australia has had an interesting legislative history reflecting long held parliamentary views on this type of uniform legislation. As you are aware Western Australia was the last state to join the MRA. Legislation to give effect to the MRA was passed in 1995. The *Mutual Recognition WA (Amendment) Act 1997* extended the initial sunset clause for the Act until February 1999 and the operation of the Act was again extended by amendment until February 2001. The Act lapsed in February 2001 creating a period in which the MRA did not apply. New Mutual Recognition legislation was passed in June 2001. The 2001 Act was deemed to have come into effect on 1 March 2001 and validated anything done after the expiry of the 1995 Act. The new Act included a 10-year sunset clause that does not expire until 2011. It was noted that during the period after the 1995 Act lapsed there was no evidence of significant disruption and very few complaints.

The time involved in passing the legislation and the inclusion of sunset clauses is evidence of the difficult parliamentary process experienced with the MRA. Some opposition stems from concerns with the process of adopting the amendment process for the Commonwealth Act while other concerns have focussed on the impact of mutual recognition on the standards for registering occupations and goods in Western Australia. Examples included concerns with differing standards between jurisdictions

in the real estate and nursing professions and the meat industry. These concerns were resolved in the course of parliamentary debate on the legislation.

The Government reviewed the operation of the *Mutual Recognition (Western Australia) Act 1995* in 1997 and found that:

- it was difficult to determine the impact of the Act using the available data on the number of registrations under mutual recognition or the goods affected by the scheme;
- submissions highlighted positive impacts including improved employment mobility and recruitment, transfer of skills and knowledge, the creation of national goods markets and the elimination of costs for businesses;
- awareness of mutual recognition was higher amongst those in the occupational category rather than in the area of goods; and
- mutual recognition had been a stimulus for the creation of national standards for goods and occupations.

Based on the positive and supportive comments concerning the MRA and the absence of any submissions suggesting Western Australia should withdraw from the scheme, the Review concluded it was in Western Australia's interest to remain part of the mutual recognition scheme.

In some cases mutual recognition has contributed to the harmonisation of differing standards among the states and territories but some difficulties do remain. In relation to the issue of product safety orders, at the commencement of the MRA, Western Australia undertook an extensive programme of harmonisation. However, the Department of Consumer and Employment Protection advised that some orders have been reintroduced as dangerous products have reappeared on the market. An example is the product safety orders in relation to child carrying seats for bicycles. These orders are considered essential if consumer safety is not to be compromised and there have been few complaints from manufacturers and suppliers about complying.

The process of temporary exemptions has provided a method to allow other jurisdictions to consider Western Australian specific product safety orders but different market conditions, community expectations and government priorities in other jurisdictions have meant that harmonisation has not always been possible. Western Australia continues to pursue actions through the relevant national forums but it is noted that a legislative framework for nationally consistent product safety legislation may be the only way to overcome differences. Similar approaches to national standards have occurred in occupations in the health, building and food industries since the inception of the MRA.

In summary it would appear that despite a difficult legislative history, the operation of the MRA in Western Australia has caused minimal disruption and created benefits for the economy.

The TTMRA

The TTMRA is not in operation in Western Australia. A Bill to adopt the TTMRA was introduced into the Western Australian Parliament in October 1999 but had not been passed by the time the Parliament was prorogued in January 2001 for the State election. Following the election the Bill was again introduced, this time in August 2002 and it continues to be considered by the Parliament. It is hoped that the Bill will be passed in the near future.

In the course of consideration by the Legislative Council the Bill giving effect to the TTMRA has twice been referred to a parliamentary committee for consideration. In 1999 the Bill was referred to the Legislative Council Standing Committee on Constitutional Affairs. In 2002 the Bill was referred to the Legislative Council Standing Committee on Uniform Legislation and General Purposes. In both cases the respective committees recommended the Bill be passed without amendment. In 1999 the Committee raised no substantive issues in its report, while in 2002 the Committee report considered concerns about the impact of the Bill on the quarantine laws applying in Western Australia and in particular the importation of New Zealand fruit products into Western Australia. The Committee was concerned that:

"the effect of the qualifications on the exemptions of certain laws relating to quarantine set out in Item 1, Part 1 of Schedule 2 of the Commonwealth Act may be to potentially place Western Australia at greater risk of exposure to dangerous pests and diseases than is currently the case".

After taking evidence from the Department of Agriculture, the Committee concluded that the Bill was not likely to place Western Australia at greater risk of exposure to dangerous pests and diseases.

Previously the Parliament had not raised substantial criticism although as with the MRA legislation there were concerns raised during debates with the amending provisions and the right of the State Parliament to consider amendments to the Commonwealth Bill. These were resolved in the debate in 1999 and 2000 and have not been raised again in more recent debates.

As with the MRA legislation some legislators have queried the impact of the TTMRA on the standards required for occupational registration. In particular concerns were identified about individuals from third countries using the provisions of economic agreements between New Zealand and those third countries in order to register in New Zealand. This would then allow them to register in Australia under the TTMRA. The examples cited included dentists and veterinarians, with concerns that registration requirements in those third countries were lower than those in Australian jurisdictions. It is understood that these concerns are being addressed through the appropriate national forums.

It is possible that similar implementation issues will arise if the TTMRA becomes operational in Western Australia but given the State's experience with the MRA the issues should be easily resolved.

Thank you for the opportunity to provide a submission to this inquiry.

Yours sincerely

Petrice Judge
DIRECTOR
OFFICE OF FEDERAL AFFAIRS