Submission
Productivity Commission Review of
Mutual Recognition

National Occupational Health and Safety Commission (NOHSC)

1. The Productivity Commission has been asked to review two sets of mutual recognition arrangements:

- the Mutual Recognition Agreement (MRA) between all Australian States and Territories, which commenced operation in 1993; and
- the Trans Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand, which came into operation in 1998.

2. The NOHSC Office, on behalf of the Employment and Workplace Relations portfolio, administers the Chemicals Cooperation Program of TTMRA. The Chemicals Cooperation Program relates to five areas of regulation that affect the free trade of chemicals. These are:

- notification and assessment of industrial chemicals;
- domestic poisons scheduling;
- material safety data sheets;
- inner labelling of dangerous goods; and
- sale and use of explosives.

3. While the NOHSC Office has overall responsibility for providing final reporting, portfolio responsibility varies across the Commonwealth and State jurisdictions for various components of the Chemicals Cooperation Program. The NOHSC Office has previously supplied written information as a package to the Productivity Commission about the Chemicals Cooperation, during initial discussions held on 14 March 2003. This package of information included the two most recent TTMRA annual reports, the Regulation Impact Statement (RIS) prepared by the NOHSC Office on the Chemicals Cooperation Program, and the draft report of the preliminary review of the NOHSC hazardous substances regulatory framework (HSRF).

4. The information contained in this submission is consistent with the discussions held between the Productivity Commission and the NOHSC Office to date.

5. In administering the Chemical Cooperation Program (Cooperation Program), the NOHSC Office has identified a number of issues that affect the implementation and the effectiveness of the TTMRA. These issues are influenced by the State/Territory and Commonwealth agencies that have direct responsibility for implementation of the TTMRA within their jurisdiction.

Issues

Broad Objectives

6. In the first five years of coordinating responses from the State/Territory jurisdictions on achieving mutual recognition in the areas covered by the Cooperation Program, some broad issues have been identified that impede both mutual recognition and harmonisation.

7. Firstly, State and Territory technical bodies tend to focus on the consequences of the TTMRA for regulation, rather than on its benefits. Where all, or the majority, of regulation the responsibility of a State jurisdiction, it is important that the economic benefits that would accrue to that State are clearly defined and understood. There may be advantage in assisting States and Territories to identify the economic benefits, where they would come about and encouraging their communication to affected industry parties. For example, simplification of regulation may result from TTMRA implementation, such as recognition of MSDS and inner labelling of chemicals, and the resultant economic and health benefits of such simplification should be identified.

9. Secondly, there is some lack of clarity on how interim TTMRA measures would be implemented in some of the jurisdictions. Some State Governments or State-based businesses have concerns that the adoption of interim TTMRA measures may be immediate, and this raises issues on depletion of existing stocks of regulatory materials, changes to procedures, and the provision of adequate training and communication prior to TTMRA implementation. For example, immediate changes to the labelling of chemical products, brought about by recognition of different hazard communication processes, may result in costs to industry. The development of in-principle implementation arrangements, with adequate lead-times, may make the process more acceptable in the States and Territories.

10. These issues have arisen in the process of obtaining cooperation from all jurisdictions in implementing and administering the areas covered by TTMRA, and achieving effective harmonisation across the Tasman.

Implementation

11. In implementing TTMRA principles and achieving the necessary associated changes in the supporting regulatory framework, there have been some difficulties.

12. Responsibilities that cross portfolio and/or Ministerial Councils' responsibilities can make some aspects of the Cooperation Program difficult to negotiate. The lack of a Commonwealth level coordination/administration point for the sale and use of explosives, for example, makes it difficult to achieve an agreed plan to make progress to either harmonisation (needed in the first instance) or mutual recognition.

13. Given the number and range of views in Australian States and Territories, achieving national agreement before seeking a mutual arrangement with New Zealand has been a primary activity in the TTMRA implementation to date. In some instances there has been agreement by both the responsible Australian Commonwealth and New Zealand agencies on identified achievable outcomes

for specific components of the Cooperation Program (such as the mutual recognition of Material Safety Data Sheets and the sale of explosives). However, some States and Territories have not agreed to mutual recognition during negotiations because of variations in how they regulate these areas.

14. There have also been variations in the approach by both the Australian and New Zealand jurisdictions in adopting mutual recognition and harmonisation principles, particularly where the approaches taken by the countries are fundamentally different, as is the case in a number of areas in the Chemicals Cooperation area, such as the process for notification and assessment of chemicals..

15. In Australia the fragmentation of responsibilities for regulating chemicals has impeded progress. However, this is largely due to the different approaches taken in the various Australian sectors (such as workplace, consumer, and agricultural chemicals) to particular aspects of regulation. For example, the notification and assessment of industrial chemicals and domestic poisons scheduling are the responsibility of health jurisdictions. Inner labelling of chemicals and material safety data sheets are the responsibility of OHS jurisdictions. The sale and use of explosives are administered under a variety of portfolios at State level with no coordination provided at Commonwealth level. A flowchart showing responsibility for regulating the components of the Program is at Attachment A. Different approaches to hazard classification and communication (such as labelling) are used in the different sectors.

16. New Zealand (NZ), in committing to the principles of the UN's Globally Harmonised System for the Classification and Labelling of Chemicals (GHS), developed new legislation, the Hazardous Substances and New Organisms Act and Regulations (HSNO), in line with these principles. This has resulted, in some areas such as notification and assessment of industrial chemicals and domestic poisons scheduling, in a divergence in how both New Zealand and Australia regulate the sub components of the Chemicals Cooperation Program. New Zealand's relatively recent commitment to its new scheme virtually precludes it from considering changes to its arrangements in the short-term, if not longer.

17. Australia has also given in-principle national support to the development of globally-harmonised hazard communication, as a result of activities stemming from the 1992 UNCED Earth Conference (Chapter 19, Agenda 21). In Australia, implementation issues stem from the use of different approaches to chemicals regulation in the different sectors. For workplace chemicals, for example, there has been Ministerial Council endorsement of a review of the regulatory framework for hazardous substances, partly to ensure consistency with the GHS. As a result, national OHS standards are being revised to align with the GHS. This will also allow harmonisation and mutual recognition with New Zealand, although the GHS implementation timeframe is longer than that for TTMRA implementation.

18. In areas such as public health (consumer chemicals, pesticides), there has been little or no firm commitment to undertake adoption of the GHS. As a

consequence, harmonisation and mutual recognition with New Zealand is an issue in these sectors. The NOHSC Office is undertaking the development of a national analysis, in consultation with other Commonwealth agencies, to assist other sectors to decide how to progress in this area.

19. Australia is also committed to its current arrangements in some sectors, believing them to provide a level of regulatory rigour that is required by the Australian public. This currently appears to be the case with poisons scheduling, and is complicated by the fact that New Zealand no longer has 'poisons' *per se*, nor poisons scheduling, but rather deals with poisons as hazardous substances under its overarching hazard classification system.

20. However, it should be recognised that there have been positive effects resulting from New Zealand's early adoption of GHS principles, especially in the area of Material Safety Data Sheets. As a review of NOHSC's Model Code Of Practice for Material Safety Data Sheets (MSDS) was underway in Australia at the time, the move by NZ towards GHS provided further impetus for Australia to ensure that its Code of Practice was aligned with the GHS. As a consequence, the Australian and New Zealand Codes of Practice will be very similar and harmonised, as a consequence of extensive liaison between agencies in the two countries. This was also assisted by a Memorandum of Understanding between the NZ Environmental Risk Management Authority (ERMA) (a statutory authority established under HSNO Act 1996 to manage hazardous substances in NZ) and the Australian National Occupational Health and Safety Commission. This MoU was established to provide a cooperative relationship to manage hazardous substances in the workplace.

Exemptions and exclusions

21. Under the current special exemption arrangements of the TTMRA, special exemptions are not normally granted until April of each year, with the reporting required by the preceding November on progress. This, in effect, gives a seven-month period between an exemption and a report to make some progress. As the reports require agreement of both Australian State and Commonwealth jurisdictions, as well as the New Zealand jurisdiction, efforts may focus on the reporting arrangement rather than achieving progress in mutual recognition. Reporting progress each year does not necessarily assist progress nor promote cooperation between the States, Territories and the Commonwealth. An examination of the reporting timeframes should be considered, with the possibility of extending the duration of exemptions, with suitable conditions to ensure that work progresses. For example, the longer timeframes required for alignment with the GHS may be examples of suitable time periods for implementation of the TTMRA in areas such as inner labelling of chemicals.

22. It will be important to the success of TTMRA that Australian and New Zealand jurisdictions distinguish the areas where mutual recognition is achievable in the near future and concentrate their efforts on those sub-components, and those areas where permanent exemption is warranted. The mutual recognition of notification and assessment of industrial chemicals and

domestic poisons scheduling would raise significant regulation issues in the various jurisdictions. This is because New Zealand now only assesses hazardous substances and does not schedule poisons (they are treated as hazardous substances) while Australia assesses all chemicals, regardless of hazard, and schedules domestic poisons that are then regulated at State level. It is important that the TTMRA process achieves whatever successes it can in the shorter time frame, while allowing international harmonisation processes to further align Australian and New Zealand trade arrangements in the future, without diminishing the safety of humans and the environment currently afforded under the existing arrangements.

Efficiency

23. Efficiency is somewhat hampered by the ability to inform all relevant stakeholders on all issues. As each sub-component is dependent on multiple agencies in multiple jurisdictions to reach agreement, lines of communication in regulatory areas and policy areas must be improved to ensure each jurisdiction can speak with one voice. This is an issue that is fundamental to the successful negotiation of any treaty or free trade arrangements Australia may enter in the future.

Chemicals Cooperation Program

Responsible Agencies (required for sign off on Report Recommendations)

