# SUBMISSION TO THE AUSTRALIAN PRODUCTIVITY COMMISSION ON THE 2003 REVIEW OF THE TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT

## PART ONE: INTRODUCTION

1. The New Zealand Government welcomes the opportunity to make this general submission to the Australian Productivity Commission (Productivity Commission) on the Review of the Trans-Tasman Mutual Recognition Arrangement (TTMRA). The government recognises that the Productivity Commission, in discharging its responsibilities, will have consulted widely with individual stakeholders, including government regulators, in New Zealand on the effective operation of the Arrangement and its constraints and that their views will inform the Productivity Commission's analysis.

2. It is appropriate in this 20th anniversary of the Australia New Zealand Closer Economic Relations Trade Agreement that the contribution and potential of the TTMRA should be reviewed against governments' strategic objective of creating a seamless trans-Tasman market. The last twenty years have seen the New Zealand and Australian economies become increasingly integrated. The depth and scope of this integration cannot be described by the assessment of trade performance alone, rather it is illustrated by the dynamic effects associated with the high degree of regulatory integration of the goods and services markets. These dynamic effects have shaped labour market responses, the design of business operations and investment decisions in the trans-Tasman market. The New Zealand Government believes that the TTMRA has been a central instrument to date and that it has an important continuing role to play in driving deeper levels of integration between our two countries.

3. This submission is split into three parts: the introduction, the main body of the submission and conclusion. Part Two, which contains the main body of the submission, addresses the following five dimensions split into distinct sections:

   - Section A: identifies the continuing strategic value of the Arrangement to New Zealand;

   - Section B: provides a whole of government retrospective assessment on the operation of the Arrangement in respect of goods and services;

   - Section C: identifies some areas where policy objectives are in tension with the TTMRA objectives;

- Section D: reflects on the benefits of continuing the Co-operation Programmes in respect of the Special Exemptions but in the context of simpler administrative procedures; and

- Section E: identifies some key issues that the Productivity Commission may wish to explore as it looks at the possibilities for extending the scope of the Arrangement.

## PART TWO

### Section A: Strategic Considerations

4. The New Zealand Government considers that the primary objective of the Arrangement is as valid today as it was on the signing of the Arrangement in 1997. The objective was, and remains, to remove regulatory barriers to the movement of goods and services providers between the two countries, and thus to facilitate trade by:

    - enhancing international competitiveness of Australian and New Zealand enterprises;

    - increasing the level of transparency in trading arrangements;

    - encouraging innovation; and

    - reducing compliance costs for business.

5. A key objective for the Productivity Commission is to determine how well the TTMRA has delivered on these objectives.

6. These objectives could have been achieved in a number of ways. It was, and remains today, however, the power of the design of the TTMRA model, based on the principles of acceptance of equivalence of regulatory outcomes, borne of confidence in our respective regulatory approaches, and the comprehensiveness of the arrangement (everything is in unless specifically identified to be out) that New Zealand believes has delivered benefits beyond any other approaches internationally and at the least cost to manufacturers, service providers and consumers in both countries.

7. Most importantly, because mutual recognition is the default position, the TTMRA has become a central driver of regulatory policy co-operation between Australia and New Zealand. This has ensured that the Arrangement is a dynamic instrument capable of adapting to continually changing circumstances and delivering continuing benefits to stakeholders. No other mutual recognition model internationally between sovereign parties embraces within its intrinsic design such a simple and powerful driver of regulatory co-ordination. No other bilateral model focused on removing regulatory barriers to trade, without explicit obligations for standards and regulatory

harmonisation, has delivered such comprehensive benefits to manufacturers, in terms of reduced transaction costs for exporting, to consumers in terms of choice, and to service providers in terms of opening up the employment market.

8. The Arrangement has also placed greater discipline on governments contemplating the introduction of new and diverging standards and regulations for the sale of goods and registration of occupations. In doing so, it provides a counterbalance to any pressures for excessive regulation. It also allows scope for beneficial regulatory competition between the Parties. This is entirely consistent with both Australia's and New Zealand's commitment to meet the objectives of the WTO TBT Agreement and with the COAG Principles and Guidelines for National Standard Setting and Regulatory Action which underpin the development of regulatory responses under the TTMRA.

9. This is not to say that there are no frictions or emerging tensions under the TTMRA which require attention. To the extent that these have emerged under the Arrangement they broadly reflect three things:

   - regulatory co-ordination is not always easy, and it is to be expected at times that the parties will have different policy and regulatory starting points. It takes both time and compromise to iron out differences. This was anticipated and should be viewed simply as part of the process;

   - a failure to recognise the implications of the Arrangement and factor this into cost benefit analysis at an early stage in domestic policy processes where regulation is being developed. This results in late efforts to resolve issues (including the possibility of seeking temporary exemptions) or continuing delays which can result in a high degree of frustration at the official and political level; and

   - tensions due to differences between the objectives of the TTMRA and those of other policy objectives in the area of social regulation.

10. The first two concerns in our view should be readily addressable with good problem definition. The last is more fundamental as these tensions reflect substantively different policy objectives that tend to result in substantively different regulatory standards and approaches, the effect of which may be in conflict with the objectives of the TTMRA.

11. It is worth noting that one of the understandings which underpin the Arrangement was that it would contribute to the development of the Asia Pacific region by providing a possible model for co-operation with other economies. As tariff barriers on manufactured exports have come down, attention is increasingly shifting to the effects of non-tariff barriers, including technical barriers to trade. Some estimates today suggest that the cost of these technical barriers amount to between 8% –15% of the total value of

exports, significantly higher than the global tariff profiles on many manufactured goods.

12. The shared experience and depth of understanding of good regulatory approaches and frameworks for reducing regulatory barriers to trade have allowed Australia and New Zealand to lead the development of APEC's substantive work on standards and conformance and to shape bilateral approaches. APEC's Standards and Conformance Subcommittee today is regarded as one of the key parts of the Asia Pacific region's trade and technical infrastructure. In this context, New Zealand and Australia have been instrumental in designing the electrical and electronic goods mutual recognition framework, which allows participation by member countries at various levels reflecting economies' different states of technical competence. It remains however a fact that the unique circumstances that underpin the TTMRA, similarity and confidence in our respective regulatory approaches supported by political ambition, are not readily found with other bilateral trade partners.

**Section B: Retrospective Assessment of the Operation of the TTMRA**

13. This section provides an overview of the New Zealand government's views on how the TTMRA has worked in respect of goods and service providers to date. It attempts to address the following

- the impact that the TTMRA has had to date;
- the nature and materiality of the problems that have been encountered;
- the current state of the Special Exemption Co-operation Programmes; and
- the scope for streamlining the reporting and annual reporting processes under the Co-operation Programmes.

**Goods**

14. Short of a systematic review of manufacturers exporting to Australia on the benefits associated with transactions and compliance costs under the Arrangement it is difficult to accurately quantify net benefits to either New Zealand or Australia. Limited survey work and discussions with business in New Zealand suggest however that we can have reasonable confidence that the benefits have been widespread and substantial. They have simply been accepted (there is no incentive to proselytise the benefits) and are now taken for granted. One measure of the value therefore would be to assess the impact of removing the benefits.

15. To the extent that attention is drawn to the Arrangement it is because a problem has arisen. Perversely therefore, another measure of the success of the Arrangement may be based on an assessment of the number and scope of problems that have been identified and their significance in the context of overall trade. Another measure could be the frequency that governments/regulators have had to intervene in order to deal with a problem. Has a pattern emerged that suggests that there are broader difficulties than assumed? How material are those difficulties?

16. Some specific concerns that have been raised include:

- some residual lack of knowledge and understanding of the principles and obligations on governments under the TTMRA by manufacturers, exporters and some standards development bodies. Our sense is that there is still scope for improving information to business and business associations;

- different levels of understanding and approaches to the interpretation and implementation of the Arrangement by regulators on both sides of the Tasman. It remains a concern that there are a number of examples where regulators have failed to recognise the need for early trans-Tasman consultation and co-operation or where consultation has broken down;

- associated with this, failure to take the TTMRA into account early on in the policy development process including failure in the face of tensions between domestic policy and the objectives of the TTMRA to specify comprehensive cost benefit frameworks; and

- friction between provisions for the sale and use of certain goods.

- There is evidence to suggest that some traders in New Zealand are not aware of their rights to sell into Australia under New Zealand regulatory requirements. There is also a tendency among some manufacturers still to favour voluntarily meeting Australian regulatory requirements when exporting to Australia in order to mitigate any risk of delay associated with the possibility of uneven interpretation of the obligations under the Arrangement by regulators, or other complications. For example, a New Zealand company routinely chooses to obtain approval of its products in one Australian state and then take advantage of the Australian domestic MRA.

17. Some regulators, who have either recently assumed their roles or who have not bought wholeheartedly into the Arrangement, can be reluctant to accept products that comply with New Zealand requirements. This has been the case where regulators have been uncertain about the implications of the Arrangement in respect of different packaging and labelling standards. For example, in a recent case, Australia raised issues with New Zealand over

quantity marking on the main display and marking in centilitres. New Zealand wine labels show measurements in centilitres whereas the Australian domestic legislation requires measurements in millilitres. The Australian Customs authorities had not appreciated that the TTMRA means that a good that may be sold in New Zealand may be sold in Australia without meeting any additional requirements relating to the presentation of goods such as packaging and labelling. Similar issues have been encountered in New Zealand.

18. There is also some local jurisdictional resistance to accepting other than Australian rules. This situation may be reinforced by the fact that generally the Australian market is dominated by purchaser preference whereby consumers favour products that comply with Australian regulations over products which take advantage of the application of the TTMRA provisions. Further some Australian retailers seem to prefer to sell goods that comply with Australian rules only despite the obligations of the TTMRA.

19. The issues described above are not unique to Australia and should be kept in perspective and viewed in the context of the overall seamless operation of Arrangement. They do, however, point to the possible need for further communication of the intent, principles and provisions of the Arrangement to consumers and regulators.

*Sale and Use*

21. The implications of the TTMRA provisions governing the sale but not the use of certain products raises a more substantive policy issue. A good can be sold under the TTMRA without the need for further testing or certification. However, participating jurisdictions can provide that, in order to use that good for its intended purpose, the good must then comply with the prescribed domestic requirements. While this is not prohibited under the provisions of the TTMRA as part of its initial design, these requirements can effectively constrain sale of the relevant goods. In other words, although the requirements do not relate to the sale of goods, they have the effect of preventing or hindering sale (the test applied under the EU mutual recognition regime).

22. An example of this is the sale and use of pressure equipment. In New Zealand there is a requirement that certain equipment must not be operated unless the equipment has a current certificate of inspection. In order for an inspection body to be able to issue a certificate of inspection, the equipment must be designed and manufactured to a recognised standard and have had design verification and fabrication inspections done to it. In Australia there is no equivalent requirement for a certification of inspection, design verification or fabrication inspection. The problem arises therefore when pressure equipment is manufactured in Australia for sale in New Zealand. If the equipment does not have design verification and fabrication inspection then it

cannot be issued with a certificate of inspection. Without such a certificate, the equipment cannot be used in New Zealand. This situation clearly illustrates the difficulties created by the provisions for the use of goods falling outside the ambit of the TTMRA. Another example applies to the Australian requirement in relation to high voltage electrical meters, which must meet specific domestic requirements before being connected to the transmission grid.

## Occupations

23. Generally the TTMRA is considered to be working well and achieving its objectives across all regulated occupational groups. It has enhanced workforce mobility between the two countries and has significantly reduced compliance costs by eliminating the need to prove professional competence through re-testing and re-certification of personnel. It has moreover, enhanced and streamlined the registration process. Importantly, it has also improved information sharing between registration authorities and professional bodies across the Tasman and, in the case of health practitioners, it has promoted the acceptance of universally accepted clinical standards.

24. Evidence suggests that the TTMRA has had a significant impact on registration numbers on both sides of the Tasman, indicating that people are using the Arrangement as intended. While the trend is that more New Zealanders have registered in Australia, in some professions registration numbers suggest the opposite. For example, recent figures suggest that of the 388 registered New Zealand patent attorneys, 254 are Australians registered under the TTMRA. Likewise the TTMRA has been successfully used by a large number of health practitioners when registering in New Zealand. The table below shows New Zealand registration numbers under the TTMRA in the health sector since 1998.

| Profession | Number of people registered in New Zealand since 1998 |
|---|---|
| Chiropractors | 18 |
| Dentists | 20 |
| Dental Technicians | 3 |
| Medical Radiation Technologists | 19 |
| Nurses | 530[1] |
| Occupational Therapists | 19 |
| Optometrists | 14 |
| Dispensing Opticians | 1 |
| Pharmacists | 21 |
| Physiotherapists | 83 |
| Podiatrists | 3 |
| Psychologists | 35 |

[1] Of the 530 nurses registered, 194 are Comprehensive nurses, 138 are General nurses, 73 are General and Obstetric nurses, 25 are Psychiatric nurses, 1 is a Psychopaedic nurse, 62 are Midwives, and 37 are Enrolled nurses.

25. In addition to the TTMRA, labour force mobility has been assisted by various regulator-to-regulator agreements which either mirror the TTMRA framework for occupational registration or set out processes for resolving difficulties. Examples include a reciprocity agreement between the New Zealand and Australian Surveyor Boards mutually recognising each other's licensing procedures; mutual recognition between the New Zealand and Australian Maritime Safety Authorities for certification issued under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978; and various other regulator-to-regulator memoranda of understanding and protocols.

26. Against this background of generally positive implementation, there are some issues and practices in the area of occupational registration which continue to cause some concern. These are:

    - the equivalency of certain qualifications and incidences where regulators have imposed additional training requirements;

    - the use of the TTMRA to circumvent higher standards in the other jurisdictions (back door entry issue); and

    - inconsistencies in the registration models used in Australia and, to some extent, in New Zealand.

27. Notwithstanding the Arrangement, there is evidence that some registration authorities have imposed, or seek to continue to impose, conditions as prerequisites for registration on personnel from other jurisdictions. For instance, the New Zealand Civil Aviation Authority (CAA) has accepted applications from Australian holders of Aircraft Maintenance Engineer Licences (AMEL) under the TTMRA. However, in contrast, the Civil Aviation Safety Authority Australia (CASA) has required holders of New Zealand AMELs to sit an air law examination prior to issuing an Australian AMEL. Recently, CASA has added another prerequisite in that the New Zealand licence holders must hold a company authorisation for large aircraft types. The CASA has introduced these prerequisites on the basis that some New Zealand AMELs covering maintenance in relation to specific aircraft are not equivalent to Australian AMELs covering maintenance on the same aircraft.

28. New Zealand invites the Productivity Commission's views on:

    - whether there is evidence to suggest an increasing trend towards demanding certain conditions be met as a prerequisite for registration;

    - whether there is supporting justification in terms of material and substantive risks to be managed;

- how regulatory co-ordination could be improved with a view to reducing regulatory differences.

29. A related but substantively different issue is that some registration authorities require foreign qualified professionals who have gained registration in other TTMRA jurisdictions to undertake some additional training prior to practising their profession. For instance, a New Zealand qualified foreign going master is required to attend a two week course on the Global Maritime Distress and Safety System and pass a full master's oral examination before being permitted to serve on an Australian ship. The equivalent Australian license holder is required to sit only a limited master's oral examination to test the seafarer's knowledge of New Zealand maritime law and important safety topics. Similarly, the Valuers Registration Board (VRB) advises Australian valuers that before practising in New Zealand as a valuer, they must have a good working knowledge of New Zealand land valuation law. The VRB strongly recommends the sitting of a New Zealand Property Law Paper at a recognised New Zealand tertiary institute and working under a registered valuer for an initial year. It also appears to be common practice among health professionals that overseas registrants, including those from Australia, are required to up-skill on New Zealand legislation, procedures and cultural issues as a condition following their registration.

30. These requirements do not preclude people from registration, however they do impose some additional conditions on practising in that occupation. New Zealand invites the Productivity Commission's view on whether these transaction costs are increasing and whether they are fully supportable in the context of managing public risk.

31. Where standards or the registration requirements in one jurisdiction are lower than those in other participating jurisdictions some regulators continue to perceive a risk of an overall lowering of standards. To the extent that some regulators continue to advance this view, their concerns may continue to stem from their original discomfort with the mutual recognition policy decisions which dealt to the question of substantially equivalent standards.

32. In some cases in New Zealand there remains a perceived underlying desire to manage supply which is clearly contrary to the objectives of the Arrangement, and there is a need to robustly dismiss this argument.

33. There is however, as far as the government is able to assess, no evidence in New Zealand to suggest that concerns about lowering of standards are widely held or that attempts at supply side management are practised widely. To the contrary, most occupational bodies fully appreciate the intent and implementation obligations of the Arrangement.

34. One concern which has wider traction among some regulators is related to perceived "back door" entry whereby overseas practitioners are using TTMRA jurisdictions with less onerous registration requirements to gain entry into other participating jurisdictions. For example, it appears that South African dentists may be using New Zealand registration as an easier entry route into Australia. The situation may be similar for optometrists.

35. On the one hand this should be dismissed as no more than a perceived risk as, in the case for dentists, the New Zealand and Australian standards for registration are no different. On the other hand, where the standards are different but deemed for the purpose of the Arrangement to be sufficiently equivalent in the context of New Zealand and Australian trained professionals, they may pose a different level of risk in the context of foreign trained professionals. A related issues is whether appropriate background checks of third country practitioners (for example, whether a practitioner has lost their registration due to misconduct in a non-TTMRA jurisdiction) are carried out to the same degree as for practitioners who have always lived in Australia or New Zealand. Consultation with registration bodies suggest that the appropriate background checks are carried out. New Zealand invites the Productivity Commission's views on the materiality of these issues.

36. The final area where some concerns have arisen is where there are inconsistent registration models across jurisdictions. For example, New Zealand has some concerns about the different structure of nursing registers in both countries. New Zealand has seven nursing registers (e.g. general, psychiatric, comprehensive etc), whilst Australia has only one. Further, in some circumstances, there are inconsistent approaches to registration across Australian states. Only four of the eight states register occupational therapists and a similar situation exists for dental technicians. While these issues are not insurmountable, they do create complexities in the registration process. New Zealand would welcome the Productivity Commission's views on the significance of this issue.

**Section C: Tensions between domestic policy objectives and the TTMRA**

37. One significant issue that is becoming more apparent is the tension that is arising between the trade and economic objectives of the TTMRA and other policy priorities in the area of social regulation. This is a result of fundamentally different regulatory approaches and standards across the Tasman, often due to different policy directions or implementation timeframes.

38. The TTMRA recognises the sovereignty of the governments and the likelihood that such tensions may exist by providing pathways for their resolution by way of exemptions of some laws from the mutual recognition regime. Such exemptions must however be substantially for the purpose of protecting the health and safety of persons, or preventing, minimising or regulating environmental pollution.

39. Two pertinent examples of such tensions can be found in the areas of environmental regulation, in particular energy efficiency and water efficiency.

40. For example, in the area of Minimum Energy performance Standards ("MEPS"), New Zealand has set more stringent MEPS for electric storage water heaters and fluorescent lighting ballasts than Australia as part of our National Energy Efficiency and Conservation Strategy. While a temporary exemption has recently been obtained for these goods, it is anticipated that the differing MEPS levels are likely to converge in the medium to long term. A parallel tension may emerge as a result of Australia's proposal for mandatory water efficiency labelling and/or minimum water efficiency standards for household fittings and appliances such as showerheads and washing machines.

41. There are concerns that the diverging regulatory objectives in the area of environmental regulation may go beyond the intent of exemptions and may have the potential to be in permanent opposition to the Arrangement's objectives. They do so on two counts:

    - because of the potential application of these standards to a significant proportion of elaborately transformed manufactured products between the two countries and the consequent trade effects; and perhaps more importantly

    - because they lead to recourse to temporary exemptions which could become viewed as the only pragmatic way forward.

42. The key actions in terms of minimising such tensions and therefore preserving the objectives of the TTMRA while accounting for the individual circumstances of the participating governments are:

    - early consultation between regulators and with standards development bodies to identify any potential issues;

    - cost benefit frameworks which provide respective governments with a comprehensive and clear understanding of the policy choices; and

    - a preparedness to co-operate by way of supporting specific regulatory choices in the interest of achieving both the TTMRA and other policy objectives.

43. The first two require regulators to consult more broadly within their respective policy machinery. The latter may require direct political choices and commitments.

44. Whilst recognising the existence of fundamentally different policy drivers and noting that the will on both sides is for these matters to be dealt with as expeditiously as possible, New Zealand invites the Commission to reflect on how best to handle such matters within the operation of the Arrangement. Views on the scope for improvements in regulatory co-ordination to minimise such emerging difficulties would also be useful.

## Section D: Special Exemption Co-operation Programmes

45. This section provides an overview of the New Zealand experience in administering the Special Exemption Co-operation Programmes alongside Australian regulators to achieve mutual recognition or harmonisation in the areas outside the mandate of the Arrangement. In addition, we address the question of the need now to simplify the administrative and political processes underpinning the annual roll-over of Special Exemptions, while recognising the importance of maintaining some process disciplines to make further progress in these areas.

46. When the TTMRA was negotiated, it was acknowledged that there were some cases where the application of mutual recognition principles was premature, reflecting substantively different regulatory objectives and approaches. In excluding these Special Exemptions it was nevertheless recognised that every effort should be made to bring these areas together through regulatory co-operation programmes. Special Exemption Co-operation Programmes were accordingly established in the following areas: therapeutic goods, motor vehicles, electromagnetic capability and radio communication equipment, gas appliances, hazardous substances, industrial chemicals and dangerous goods. In the case of consumer product safety standards, a Special Exemption was made for the Australian fair trading legislation only.

47. The aim of these Co-operation Programmes is to encourage the development of regulatory outcomes which support mutual recognition, harmonisation or permanent exemption of the respective regulatory regimes. The last five years have seen substantial progress under some Co-operation Programmes with the achievement of mutual recognition.

*Consumer Product Safety Standards*

48. The consumer product safety standards Co-operation Programme began with some 300-400 Australian product safety standards. Over the last five years, mutual recognition has been negotiated for all but one of these standards, this being child car seat restraints. This outcome is the result of two far-reaching initiatives which deserve recognition. Firstly, in 1998 it was agreed that where a standard was promulgated in less than four Australian State jurisdictions, and there was no federal legislation for that standard, mutual recognition would apply. Secondly, for the remaining standards, mutual recognition was reached on the understanding that the Consumer Guarantees Act 1996

provides New Zealanders with adequate safety protection, and that the Ministry of Consumer Affairs will facilitate negotiations with traders who supply the Australian market with goods that are deemed to be unsafe in that market.

*Electromagnetic Compatibility (EMC)*

49. Similarly, in the area of electrical and electronic product compliance with electromagnetic compatibility (EMC) regulations, in November 2001, the Australian Communications Authority (ACA) and Ministry of Economic Development introduced new regulatory instruments that established common standards and product labelling arrangements. In essence, the framework provides that a product labelled in New Zealand that meets New Zealand regulatory requirements for EMC can be supplied to the Australian market, and vice versa. In conjunction with these measures the Chair of the ACA and the Chief Executive of the MED signed a Memorandum of Understanding in regard to ongoing co-operation in product labelling, technical standards and compliance monitoring. The new framework has been operating now for some 15 months and no issues or problems have been encountered. The result of this work is that EMC no longer requires a special exemption under the TTMRA and the co-operation programme is now focused on achieving mutual recognition for radio products only. Nevertheless, in the last year considerable progress has also been made in the area of radio products resulting in a February 2003 in-principle agreement to bring nine radio product categories under a common compliance framework.

50. The EMC Co-operation Programme has been notable in particular for a high degree of proactive regulatory co-operation and co-ordination, supported by a clear appreciation of the objectives of the TTMRA.

51. Progress under some of the other Co-operation Programmes, while measured, continues to be constrained by a number of factors including:

- continuing fundamental differences in the regulatory regimes of each country;
- inconsistency of regulatory models implemented in various Australian jurisdictions;
- friction between the domestic policy objectives and the TTMRA;
- limited acknowledgement or understanding of the TTMRA; and
- the administrative process associated with the annual roll-over of these Special Exemptions.

*Motor Vehicle Safety Standards*

52. The fundamentally different regulatory approaches to motor vehicle safety standards in Australia and New Zealand is still a major impediment to mutual recognition under the Motor Vehicles Co-operation Programme. In effect, New Zealand unilaterally recognises Australian standards under its broader regulatory framework which accepts compliance with safety standards in the UK, USA, EU, Japan and Australia. Australia continues to promote national standards as the only means of meeting adequate safety requirements. New Zealand would not wish to limit the vehicle safety standards we accept to only the Australian standards as this would limit New Zealand's access to a large number of low cost and safe used imported vehicles. New Zealand would welcome the Productivity Commission's views on the scope for further progress under this Co-operation Programme in the light of anticipated developments in Australia's regulatory approach over the next five years.

*Hazardous Substances, Industrial Chemicals and Dangerous Goods (Chemical Co-operation Programme)*

53. Progress under the Chemical Co-operation Programme has been mixed with some advances in mutual recognition and harmonisation in a couple of clearly defined areas such as safety data sheets and labelling. The relatively limited progress under the broader programme can be attributed to:

- the fact the chemicals which fall within the scope of the exemption are by their very nature hazardous and that the systems on both sides of the Tasman exist to regulate these chemicals for the purpose of protecting worker and public health and the environment;

- implementation of the Hazardous Substances and New Organisms Act 1996 ("HSNO Act") in New Zealand over much of the period of the Co-operation Programme to date. This has meant that New Zealand systems were changing to align with global chemical management systems, including the Globally Harmonised Systems for the classification and labelling of chemicals ("GHS");

- inconsistency between the Australian State, Territory and Federal jurisdictions with one another, and with New Zealand. This has contributed to the difficulties experienced by the Chemical Co-operation Programme in achieving mutual recognition;

- the HSNO Act only permits substances that have received an approval from Environmental Risk Management Authority (ERMA) to be imported into New Zealand. Australia has no such universal requirement for all hazardous substances. Although data used to obtain approval in Australia can be utilised by ERMA, the HSNO approval process (and subsequent decision making methodology) must still be applied to gain HSNO

approval. Mutual recognition would require fundamental change to the HSNO Act. This process has been further complicated by the need to account for New Zealand specific social and cultural issues, New Zealand's ecosystems and other environmental considerations, and the Treaty of Waitangi. These matters cannot be taken into account in Australian approval processes.

54. A very significant development for the Chemical Co-operation Programme is the international agreement to the Globally Harmonised System for the classification and labelling of chemicals (GHS) and the improved APEC dialogue on chemicals. New Zealand and Australia participate in both with the aim of achieving globally accepted approaches and mutual recognition. This work will underpin the drive for bilateral mutual recognition.

*Gas Appliances*

55. Australia's continuing commitment to a third party certification regime for the safety of gas appliances and New Zealand's commitment to the mandatory supplier declaration regime, which came into effect on November 2002, still reflect substantively different approaches which preclude early mutual recognition. There is agreement today within the Gas Technical Regulators' Committee that there should be a three year pause to allow the recently introduced New Zealand regime to become established and its impact monitored and assessed. The prospects of mutual recognition can then be revisited. Progress towards mutual recognition will be supported by the finalisation of the NZ Standard 5262 on gas appliance safety which will cite several Australian standards as means of compliance. Against this background, New Zealand is of the view that, subject to streamlining the administrative procedures associated with annual roll over process, regulatory co-operation efforts should continue under this Special Exemption Co-operation Programme.

*Therapeutic Goods*

56. Australian and New Zealand Health Ministers have agreed that harmonisation of regulatory requirements is the preferable option for resolving the special exemption for prescription medicines, non-prescription medicines (including Australian complementary medicines and, in principle, New Zealand dietary supplements and complementary healthcare products) and medical devices.

57. It has been agreed in principle that a single scheme to regulate those products would be administered by a single joint agency. Under the proposal, the joint agency would replace the Australian Therapeutic Goods Administration (TGA) and New Zealand's Medsafe unit within the Ministry of Health. The joint agency would deliver common regulatory outcomes for both Australia and New Zealand consistent with the overall objectives of the TTMRA.

58. A review of arrangements for advertising therapeutic products in Australia and New Zealand was completed in 2002. Recommendations to develop an advertising scheme that can be operated as part of a trans-Tasman therapeutic products agency are in the first stages of being implemented.

59. Progress has also been made on the harmonisation of the scheduling of medicines with over 90 percent of the New Zealand Schedule entries now harmonised with the equivalent entries in Australia.

60. Negotiations are underway between officials to develop a draft Treaty between the two countries with underpinning legislation. It is anticipated that draft legislation will be introduced into the respective Parliaments in 2003 to establish the joint agency, with a likely commencement date of mid-2005. This proposal will achieve the objectives of the Therapeutic Goods Special Exemption Co-operation Programme. The relationship between the proposed regime and the TTMRA is under consideration.

*Annual Reporting and Roll-Over Process*

61. While annual reporting to Ministerial Councils and the annual roll-over process through formal gazetting, was an appropriate and necessary discipline under the Co-operation Programmes for the first five years, there is overall agreement among regulators and the Ministry of Economic Development which is responsible for administering the TTMRA legislation, that the administrative and political processes are unnecessarily burdensome at this more mature stage of the TTMRA. We understand that this view is shared on the Australian side.

62. There may be some enthusiasm now for more clearly identifying areas in which it is unlikely that an additional few years will result in either mutual recognition or harmonisation and that accordingly permanent exemption might be supportable. There is considerable support now for streamlining the reporting process. Some have expressed a preference for extending the reporting requirements to several years, arguing that would allow regulators to focus on resolving the issues rather than fulfilling the administrative requirements.

63. New Zealand remains cautious however about too readily accepting arguments for moving to permanent exemption unless supported by truly unique circumstances that justify substantively different regulatory approaches for the long term. We continue to place significant value on the disciplines that the Co-operation Programmes place on regulators to inform and consult on new regulatory approaches and design. We would however welcome the Productivity Commission's view on whether there are some supportable cases for permanent exemption at this juncture.

64. New Zealand supports streamlining the reporting and annual roll-over process but remains cautious about too long a timeframe or removing final accountability to Ministers which continues to provide a strong discipline and driver for regulatory co-operation. One possibility might be to extend the roll-over period while maintaining some form of annual or two-yearly progress report to Ministers.

**Section E: Forward looking issues: Extending the scope of the TTMRA**

65. The New Zealand Government is supportive of the forward-looking element of the Productivity Commission's terms of reference, and is keen for the Productivity Commission to examine options for advancing the broader goals of the Arrangement by further developing the mutual recognition regime.

66. The New Zealand Government invites the Productivity Commission to identify, and provide advice on, key policy options for further development of the TTMRA. Issues which the Productivity Commission may wish to explore include:

- the scope of the recognition regime for goods. At present, it focuses on requirements in relation to sale of goods, and there is (as noted above) some uncertainty about the precise ambit of that focus. The EU mutual recognition regime has a broader scope, and applies to any requirements that have the effect of preventing or deterring the sale of goods in one Member State that could lawfully be sold in another Member State. This extends the application of the regime to regulatory measures that apply post-sale, for example, but which have the effect of discouraging sales of the goods in question. Would it be desirable to extend the scope of the trans-Tasman regime, along these lines?

- the scope of the recognition regime for occupations. In the light of developments in information and communication technology, and the increasing frequency with which services are provided across the Tasman by service providers registered in one jurisdiction to customers in another jurisdiction, what are the advantages and disadvantages of extending the regime to provide for mutual recognition of services provided by registered persons, rather than simply recognition of registration of service providers?

- connecting factors for recognition of goods: can the requirement that the goods must have been produced in or imported through another participating jurisdiction be relaxed, without compromising the integrity of Australasian regulatory regimes? For example, would it be appropriate to apply the recognition regime if identical goods are being lawfully sold by the same entity in another participating jurisdiction?

- the procedure for determining that the recognition regime applies to goods: rather than simply providing for a defense to prosecution after the event, should the regime provide a mechanism for determining whether the regime applies to permit goods to be sold, in advance of such sales?

- the procedure for obtaining registration in an occupation under the regime: is there the potential to speed up or simplify the process? What would be the advantages and disadvantages of changes designed to achieve this?

## PART THREE: CONCLUSION

67. In the five years since its inception, the TTMRA has largely achieved its objectives of lowering regulatory barriers to trade and facilitating the free flow of goods and service providers between Australia and New Zealand. It has moreover been a very strong instrument for trans-Tasman regulatory co-operation. Any assessment of the implementation concerns under the Arrangement accordingly need to sit in the context of its overall success in achieving its objectives.

68. Where difficulties have arisen, they are largely due to one of the following factors:

- Some residual lack of knowledge and understanding of the principles and obligations on governments under the TTMRA by some businesses, regulators and standards development bodies. Different interpretation and implementation approaches which have created some confusion and uncertainty. This suggests that there is still scope for improving information and communicating the objectives of the Arrangement to businesses, service providers and regulators;

- Insufficient integration of the TTMRA into domestic regulatory processes. The implications of the TTMRA are not always taken into account early in the regulatory policy development process. This has on occasion resulted in ‘eleventh hour’ difficulties and associated political implications that need to be resolved. This suggested that there is a need to put the onus on policy advisors and regulators to take the TTMRA into consideration much earlier in the policy process;

- Tensions and conflicts between domestic policy objectives in the area of environmental regulation and the economic and trade objectives of the TTMRA. Such tensions arise from differences in policy directions as well as differences in implementation timeframes and recently led to the use of temporary exemptions;

- The deliberate policy choice at the time the Arrangement was negotiated to limit its application to requirements relating to the sale of goods and not

to the regulatory requirements in relation to the use of goods. This limit on the scope of the TTMRA has raised concerns that some regulatory requirements relating to the inspection of goods post-sale, and the use of goods post sale, are operating as barriers to trade between the two countries. This can have the effect of preventing or restricting the sale of goods that cam lawfully be sold in another jurisdiction, in circumstances where the requirement may not be justified by health and safety or environmental factors. The operation of these regulatory requirements does not appear to be overridden by the mutual recognition legislation even though it is inconsistent with the objectives of the TTMRA;

- Residual concerns in some occupational groups about the equivalence of qualifications. This has prompted some occupational registration authorities to require, contrary to the obligations under the TTMRA, some prerequisites to registration and in some cases additional training prior to practising the occupation.

- A perceived risk of “back door” entry of third country practitioners into jurisdictions via registration in jurisdictions with less onerous requirements;

- Incompatible regulatory approaches in a very small number of cases (dealt with under the Special Exemption Co-operation Programmes) due to fundamental differences in the regulatory objectives. These differences cause difficulties for bilateral co-ordination in some Special Exemption Co-operation Programmes; and

- The administratively and politically burdensome processes required by the annual reporting and roll-over through formal gazetting have also caused some difficulties for the progress of the Special Exemption Co-operation Programmes. This suggests that there is scope for streamlining these processes.

69. Many of these issues could be resolved through better education programmes about the objectives of the TTMRA, its application and effective implementation. In addition, there is a need to include strong signals in the policy framework of both countries that the TTMRA is key to policy development and must be taken into account at the earliest opportunity in the policy development process. This will minimise the potential for friction between domestic policy objectives and those of the TTMRA.

70. In terms of the Special Exemption Co-operation Programmes, there is a need to streamline the annual roll-over process without removing the discipline on regulators to move towards mutual recognition or harmonisation. This could be achieved by extending the roll-over period while maintaining some form of annual progress reporting.

71. Finally, in terms of extending the scope of the Arrangement, the Productivity Commission is invited to consider how the TTMRA may be extended to further support the development of a trans-Tasman market for goods and services. In this context, the Productivity Commission is also invited to identify the key policy issues governments would need to consider in order to progress any further extension of the scope of the Arrangement. The Productivity Commission may wish to consider the issues identified in Section E as part of its assessment of this area.