19 May 2003

MRA Review
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir / Madam

Re: Review of Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA)

The Gas Technical Regulators Committee (GTRC) comprises representatives from each Australian State and Territory and New Zealand gas regulatory agency.

The GTRC makes the following submission in relation to the approval of mass produced gas appliances for retail sale to end consumers. The NZ gas regulatory agency has also participated in the NZ "whole of government" submission to your organisation.

GTRC accepts in principle the objectives of MRA and TTMRA in relation to the sale and approval of gas appliances.

GTRC believes that the need for exemptions and exclusions will continue, at least in the short term. In the case where two regimes have a different philosophical approach to regulations it will be more difficult to achieve mutual recognition. This may apply to a type of appliance, performance issue, such as, energy efficiency or emissions or a regulatory approach.

Comments on MRA

Within Australia GTRC has made full use of the MRA to the effect that gas appliances approved and/or sold in one state can be traded in all states and territories without further certification.

This works well within the scope of the MRA because there is an Australian agreed set of appliance standards against which appliances can be tested by an approved laboratory

as part of an appliance certification scheme that includes for appliances to be labelled to indicate to the consumer or installer that the appliance is approved.

The appliance standards and the approvals scheme are modelled on those that exist in the UK, Europe, USA, Japan and Canada and the Australian members of GTRC believe that the principle of mutual recognition is best served by a push for mutual recognition of the schemes used in these countries.

Some restrictions still apply to the "use" or installation of appliances in different jurisdictions. Some of these can be justified on the basis of climate, eg different ventilation requirements for flueless heaters. The gas industry and GTRC are working through the Australian Standards Committees to remove these differences wherever possible.

Comments on TTMRA

The supply of gas appliances is currently exempted from TTMRA under the Special Exemption, which covers regulations in relation to gas appliances safety and energy efficiency. There are significant differences between the Australian and New Zealand gas appliance regimes:

- New Zealand relies on a mandatory scheme that requires suppliers to post a public declaration of compliance and present supporting documents on request, with post sale audits to detect unsafe products.
- Australia relies on a certification scheme that includes as part of the process testing of gas appliances for compliance against an agreed set of Australian standards. The certification scheme is currently operated by the Australian Gas Association (AGA) and all Australian regulators recognise the scheme.
- Australian State legislation (except NSW) also requires point of sale identification of a certified gas appliance (normally by the attachment of a label), which is not required under New Zealand legislation.

Discussions between New Zealand and Australian gas technical regulators on the TTMRA have been held on a regular basis using the forum of the GTRC. New Zealand has accommodated some of the points raised through the introduction of the mandatory supplier declaration scheme, in November 2002. In October 2002 GTRC agreed a work program that will focus on the monitoring and assessment of the New Zealand scheme and to allow this to take place, a further rollover of the special exemption was to be sought for up to three years.

Discussions indicate a reluctance by New Zealand to modify the New Zealand gas appliance legislation to require third party certification for all supplied gas appliances, and a reluctance by Australian regulators to modify the Australian gas appliance legislation to allow the supply of gas appliances that have not been third party certified.

If the purpose of mutual recognition is to allow manufacturer's freer access to markets and to not have to produce specific models for each market then the broadest group of

markets should be selected, ie a manufacturer in Australia should be able to produce an article that will be accepted in say Australia, New Zealand and the United States.

The management of the AGA scheme have worked hard to achieve "mutual recognition" of testing laboratories and the results of the testing so that a laboratory in the UK can test to Australian conditions and be accepted. This is a step in the right direction. It is however still necessary for importers to Australia to obtain specific Australian approval, based on compliance with Australian appliance standards and in the majority of cases this results in the need for additional work to obtain certification.

The New Zealand regime allows appliances built to different overseas standards, provided that the supplier can provide on request documentation that demonstrates compliance with fundamental safety objectives. A new Standard to come into force soon (NZS 5262:2003) will recognise a number of Australian and other overseas appliance standards as the basis for that documentation.

At this stage both Australian and New Zealand manufacturers exporting to a third country have to obtain certification by an agency in that country of compliance with that country's standards.

Implementation Issues under TTMRA

The requirements of the TTMRA appear to be inflexible and may be hindering sensible progress on this issue, as it does not allow for any minor product variations between the two markets.

GTRC have been advised by NZ industry that 95% of the mass produced models of gas appliances for sale in NZ have been assessed and approved under one of the major international schemes (with the majority of appliances being subject to the Australian scheme).

It should be possible to accommodate this 95% under a scheme of recognition and to exempt the other 5%. A mechanism is also necessary to exempt product that is specifically banned in each jurisdiction or has additional local requirements. An example of these requirements would be the need to meet energy efficiency or emissions standards for environmental or indoor air quality reasons.

GTRC has tried to design a scheme that can meet the requirements of the TTMRA. These attempts however have resulted in a proposal that is very cumbersome and would require a complicated and confusing process to address country-specific variations such as the Australian labelling requirement.

The trend under mutual recognition should be to seek compatibility with international safety standards particularly when dealing with gas appliances through harmonisation. Both Australia and New Zealand are keen for this to occur.

Need for exemptions and exclusions

Where two regimes have a different philosophical approach to regulation, as in regulation of gas appliances, it is extremely difficult, if not impossible to achieve mutual recognition. It is considered by Australian regulators that if the differences in administration between the two countries cannot be resolved, a permanent exemption from mutual recognition should be examined as a future position.

In the case of gas appliances the special exemption should continue in the absence of any agreement to the philosophical approach to regulation and the 'international' standard(s) that should be applied.

The value of Mutual Recognition

The GTRC recognises the value of the principles underpinning the TTMRA but notes that some technical and other differences are likely to make full mutual recognition of all gas appliances difficult, at least for some time. We hope however that enough flexibility can be added to the TTMRA to allow early mutual recognition of most appliances.

Australian and New Zealand gas technical regulators would be happy to provide more detail or take part in a discussion of the issues if that would be of assistance.

Yours sincerely

Ken Gardner
Chair – Gas Technical Regulators Committee