Mr Tony Hinton
Presiding Commissioner MRA Review
Productivity Commission
PO Box 80
Belconnen ACT 2616
Australia

Dear Mr Hinton

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

The South Australian Government welcomes the opportunity to present its views in relation to the Productivity Commission's current review of mutual recognition arrangements.

The South Australian Government considers that both the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA) generally work well and achieve the intended outcomes of facilitating labour mobility and trade in goods between participating jurisdictions.

While there are a number of areas where the South Australian Government believes the arrangements could be refined further in order to improve the efficiency and effectiveness of their operation, and thus contribute to improved economic and administrative outcomes, the Government notes that several of these matters were the subject of recommendations in the previous review of the Australian MRA published in 1998. (The previous recommendations are listed in Attachment 1 for ease of reference.)

In keeping with the emphasis in the terms of reference that any changes from the current review should "be practically achievable", the South Australian Government offers the following comments in relation to the mutual recognition arrangements, but makes only a very small number of recommendations, one of which is that the practice of periodically reviewing the mutual recognition arrangements be discontinued. A further review should only be undertaken in response to specific concerns.

Recommendation:

Periodic reviews of the mutual recognition arrangements be discontinued.

1. OCCUPATIONAL REGISTRATION

By allowing a person registered to practise an occupation in one jurisdiction to also practise in other participating jurisdictions, mutual recognition arrangements have streamlined registration processes and facilitated workforce mobility, both within Australia and between Australia and New Zealand. The generally positive view of the schemes' operation with respect to occupational registration is illustrated by the limited number of queries, only one or two of which could be viewed as complaints, received by the Department of the Premier & Cabinet (the contact point in South Australia for queries regarding mutual recognition) since the schemes' introduction.[1]

Although the arrangements are considered to be generally operating well, one area in which the South Australian Government believes mutual recognition arrangements could clearly be improved is through the development of a more consistent approach to registration requirements for professionals trained outside Australia or New Zealand. Under current arrangements, overseas trained professionals are able to circumvent existing registration provisions or conditions imposed on their registration within Australia by registering in New Zealand and subsequently using mutual recognition to obtain registration in Australia. This is of particular concern with respect to health professionals trained outside the two countries, however, concerns have also been raised with respect to a number of other professions.

For example, in 1999 the Veterinary Surgeons Board of South Australia expressed concern that the introduction of the TTMRA would allow veterinary surgeons, whose qualifications are from institutions not prescribed in South Australian legislation, to use New Zealand as simply a stepping stone to obtain registration in Australia, with no requirement that they ever live or work in New Zealand. The variance in registration requirements for veterinary surgeons between New Zealand and Australian jurisdictions formed the basis of the concern. Similar concerns have been raised with respect to overseas trained optometrists.

When such concerns are raised with it, the Department of the Premier & Cabinet has advised the body in question of the mechanisms which exist to enable concerns to be addressed, namely referral of competency standards for an occupation to the relevant Ministerial Council for a determination. When a Ministerial Council receives a referral, it must endeavour within 12 months to reach a determination. Any party to the TTMRA may refer a matter to the relevant Ministerial Council for determination.[2]

It is noted that recommendation 8 of the previous review addressed this matter. See also recommendation 28.

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[1] The South Australian Government recognises that the small number of queries and complaints could also be attributed in part to a lack of knowledge within the community with respect to mutual recognition arrangements and/or the appropriate avenues to address complaints.

[2] The South Australian Government has no data on the number of referrals received by Ministerial Councils.

In addition, it has been the experience of the South Australian Government that some interstate regulators do not always strictly adhere to the provisions of the mutual recognition legislation. In particular, licensees from South Australian have at times not been able to access licensing interstate through mutual recognition, without being required to undertake some form of training or recognition of prior learning (RPL) process. When such instances have been brought to the South Australian Government's attention, the Office for Consumer and Business Affairs (OCBA), which administers the licensing regime for many occupations in South Australia, has informed the licensee of his or her right to appeal under the mutual recognition legislation, or to lodge a complaint with the relevant Government Ombudsman.

Through the Commissioner for Consumer Affairs' involvement in national licensing forums, the South Australian Government actively promotes the adoption of acceptable entry level criteria, which is aimed at working towards the national uniformity agenda and alleviating the concerns of those regulators who would otherwise undermine the mutual recognition legislation by requiring applicants to undertake additional training or RPL processes.

While mutual recognition legislation has reduced the cost of registering to practise an occupation in multiple jurisdictions by removing the requirement to qualify in each jurisdiction, one clear deterrent to labour mobility remains. That is that people are still required to pay registration fees in each jurisdiction and to comply with each jurisdiction's registration obligations including professional indemnity insurance and professional development requirements. One of the groups which suffers from this is medical practitioners in the Australian Defence Forces, who are regularly transferred between jurisdictions.

The mutual recognition schemes could be amended to allow a person to practise in any jurisdiction on the basis of registration in one jurisdiction.

It is noted that recommendation 6 of the previous review addressed this matter.

The argument against this is that there might then be competition between jurisdictions to gain registrations, by offering lower fees or lowering standards. If fees or entry standards were lower in one jurisdiction than another, there may be a move to register in that state, leading to an increase in revenue in that state and a loss of revenue in other states.

The role of registration bodies is to maintain a register, recommend standards and continuing education / training requirements, and investigate complaints against people who are registered. Loss of revenue, if sufficient, would possibly impact on the ability of the registration body to do this. This might lead to different professions' registration bodies having to merge, or all the state-based registration bodies for a particular profession combining into a national body.

This could actually result in a net public benefit, although it would probably be resisted by registration bodies. In the NT, there is a single professional registration body, with specialist panels where necessary (eg to hear complaints against specific professions). In SA, OCBA operates as the registration body for many occupations. Having one national registration body, or all states' bodies sharing a registration data

base, may be a way forward. This would be consistent with the SA Government's policy in relation to reducing the number of boards, committees and advisory bodies, a policy which is also supported by SA's Economic Development Board.

In addition, the SA Government believes consideration should be given to discretionary powers that would enable a state to refuse a mutual recognition application, if the applicant had previously held a licence in the same state, but lost the original licence as a result of disciplinary action. Currently, if a person loses a licence in SA as a result of disciplinary action, and then obtains a licence in another state, the person may (depending on the nature of the disciplinary action) be successful under mutual recognition arrangements, if he or she then applies for an equivalent licence in SA. In circumstances where, for example, the disciplinary action occurred recently, it may be desirable to refuse an application – particularly if there was a significant level of consumer detriment associated with the former licensee's action.

Furthermore, the South Australian Government considers that it would be prudent for occupational licensing authorities to exchange information about deregistrations, so that persons who have sought registration in a second jurisdiction under mutual recognition, in the knowledge of imminent deregistration in the first jurisdiction, may be deregistered in the second jurisdiction (assuming that the grounds for deregistration in the first jurisdiction are also grounds for deregistration in the second jurisdiction).

It is noted that recommendation 7 of the previous review addressed this matter.

The South Australian Government believes that consideration should be given to amending section 33 of the Mutual Recognition Act 1992 (Commonwealth) to include the phrase "or by operation of a statutory provision" in section 33. This amendment would result in automatic cancellation of a licence where, in another state, that licence has been cancelled by operation of a statutory provision. Without these words, the legal advice to the SA Government is that a cancellation of a licence under section 43(1) of the Home Builders Act 1989 (NSW), for misrepresentation by the licence applicant in the application process, may not result in an automatic cancellation in another state. It is not known whether other occupational licensing legislation provides for cancellation by operation of a statutory provision. Other examples may support or provide a counter-argument for the proposed amendment.

Recommendation:

Examine the need to amend section 33 of the Mutual Recognition Act 1992 (Commonwealth) to ensure that a cancellation of an occupational licence by operation of a statutory provision in one state results in the automatic cancellation of the licensee's equivalent licence in another state.

Consideration could be given to expanding the scope of mutual recognition legislation by applying it not only to individuals but to licensee companies as well. This would be of benefit to industry and would overcome the problem of Government appearing overly bureaucratic. This is particularly so in cases where company director(s) seek a

contractor's licence for their company and also worker registration for themselves. Currently, only the worker registration may be obtained under the mutual recognition arrangements. The component of the application that does not relate to the individual(s) must proceed with different assessment criteria being applied.

It is noted that recommendation 12 of the previous review addressed this matter.

2. GOODS

It appears that mutual recognition has created incentives for harmonisation of safety and similar product standards to avoid the 'lowest common denominator' effect which was one of the main concerns when mutual recognition commenced. Negotiations between jurisdictions for such harmonisation have been conducted in forums such as the Electrical Regulatory Authorities Council (ERAC) and the Gas Technical Regulatory Committee (GTRC) on which New Zealand is represented. Such negotiations are often for common standards. Regulators have aimed to ensure the agreement of their respective Governments to the adoption of uniform or similar legislation, including the common standards legislation. It has often, however, been difficult to reach agreement on joint Australian and New Zealand Standards. The South Australian Government considers that it is important that the efforts of Regulators to negotiate common standards are continued, provided progress continues to be made.

However, in areas in which it has not been possible to reach agreement after prolonged negotiations, a permanent exemption should be introduced.

New Zealand has for many years had a "prescribed articles list" (products that require approval by an Electrical Regulator prior to sale) of 14 electrical products, while Australia had a list of 60 such electrical products. Negotiations to reach agreement on a common list have extended over several years. It is understood that New Zealand has several times agreed at ERAC to introduce a prescribed articles list together with Australia, of 52 articles, but the timetable for doing so is uncertain.

While New Zealand has generally adopted less stringent standards than Australia for safety for electrical products, it has decided to adopt a slightly higher level for Minimum Energy Performance Standards (MEPS) within the common Australia and New Zealand Standard that applies to lighting ballasts and electric water heaters. The MEPS levels that apply in Australia were agreed after considerable consultation with all stakeholders. They are aligned with world's best practice levels. New Zealand put in place a temporary exemption for these products in January 2003. This exemption will be in place for 12 months.

It is relatively easy for New Zealand to adopt the position that it has because, as it does not manufacture the items in issue, it does not need to consider the requirements of its manufacturing industry.

Occasionally Regulators encounter totally unlabelled products. In such cases it is difficult to determine whether the TTMRA applies to them. It is essential that all products to which it is claimed the TTMRA applies be labeled "Made in New Zealand" or "Imported into New Zealand". If this is done, an Australian Regulator

will be able to check the extent of compliance of the goods with New Zealand requirements with the New Zealand Regulator.

The meaning of "imported into New Zealand" in section 13 of the TTMRA should be clarified to mean not only touching a wharf in New Zealand, but clearing customs etc such that (subject to any other more particular pre-sale requirements imposed by New Zealand law) the goods could be lawfully sold in New Zealand.

With regard to the issue of whether use of products should be covered as well as sale, s.8 of the *Electrical Products Act 2000 (SA)* provides that if in the opinion of the Technical Regulator an electrical product of a particular class is or is likely to become unsafe in use, the Technical Regulator may prohibit the sale or use (or sale and use) of products of that class. The section also provides for the recall of the product, and further action by the traders who sold the product to repair the product or refund the purchase price.

s.9 of the *Electrical Products Act 2000 (SA)* provides that an electrical product, the sale of which is prohibited under s.8, becomes exempt for the purposes of the MRA and TTMRA. Such an exemption applies for 12 months, or until the prohibition is revoked, whichever occurs first. Such an exemption applies only to the sale of goods. It does not apply to their use.

In the absence of other legislation that specifically addressed the issue, a person not in SA would be free to use the product.

If the Technical Regulator in SA were to exercise the power to prohibit both the sale and the use of an electrical product, then it would appear that only the “sale” aspect would be recognised under the MRA and TTMRA. Any further action required by traders to repair the product or refund the purchase price would not appear to apply outside SA.

In raising the issue of whether a mechanism should be incorporated into the MRA and TTMRA to enable jurisdictions to take coordinated action on product recalls, it is noted that recommendation 3 of the previous review concerned national arrangements for product recalls and product safety bans.

3. EXEMPTIONS

The South Australian Government would like to emphasise the importance of retaining the current permanent exemption provisions in the Schedules of the *Mutual Recognition Act 1992* and *Trans Tasman Mutual Recognition Act 1997*.

Refer recommendations 14-22 of the previous review.

The provisions relating to endangered species are for example relevant to the operation of the *National Parks and Wildlife Act 1972 (SA)*. Under section 59 of that Act, permits are issued for the import and export of protected animal and plant species. The South Australian Government considers that requiring people to obtain a permit prior to consignment is the only way to maintain accountability of lawful possessions of animals and plants.

Similarly, the South Australian Government strongly supports the continuation of the current permanent exemptions which relate to South Australia's beverage container deposit scheme and ozone protection legislation.

Container Deposit Legislation (CDL) was introduced in South Australia in 1975 and aims to control litter and provide arrangements for aggregating and recycling used beverage containers, thus contributing to the protection of the environment. The scheme, which has been shown to be successful, has strong community support and was recently extended to encompass a broader range of beverages and containers. The 1998 Review of the Australian Mutual Recognition Agreement conducted by the Committee on Regulatory Reform concluded that CDL "does not offend competition policy".[3] This view is supported by the findings of a national competition policy review of the South Australian legislation in 2000.

Recommendation:

That the participating parties maintain the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* and the *Trans Tasman Mutual Recognition Act 1997*.

A significant area of concern with respect to the current mutual recognition arrangements relates to the setting of standards for the sale of certain goods that impact on the South Australian environment but may legally be sold in another jurisdiction. A prime example of this would be slow combustion and other wood-burning heaters. Unless well designed and constructed, heaters impact on air quality by releasing pollutants such as small particles that have a major impact on health. This is especially the case in certain geographical areas such as the southeast.

South Australia has previously considered setting standards for wood heaters that could be sold in SA, but is aware that it cannot prohibit the sale of a product that did not meet the standard if that product could be sold in another state.

The mechanism to overcome potential non-compliance would be a permanent exemption, which requires the agreement of all participating jurisdictions. While temporary (12 months) exemptions can be used, they are not of much value unless there are other standards in progress such as the national fuel standards.

If there is to be an amendment to the mutual recognition arrangements as a result of the current review, it may be worthwhile to provide a streamlined mechanism for establishing permanent exemptions.

The need for more streamlined legislative processes with respect to exemptions was clearly demonstrated by the lengthy and arduous process which was required to

[3] *"Review of the Australian Mutual Recognition Agreement and the Mutual Recognition Act 1992"*, Report of the Committee on Regulatory Reform Review Group, Mutual Recognition Review Secretariat, October 1998, p.58.

correct a simple drafting error in the TTMRA. As a result of an oversight during drafting, the permanent exemption for offensive weapons failed to cite the section of South Australia's Summary Offences Act dealing with other weapons and was therefore restricted to firearms only. In order to correct this error, South Australia had to put in place a temporary exemption for other weapons and body armour while obtaining the endorsement of all jurisdictions. With the exception of Queensland, the endorsement requires a notice to be published in the Gazette. In Queensland however, an Act of Parliament must be passed before the necessary regulation can be endorsed. This process was further delayed by the calling of an election in Queensland.

It took over two years and considerable time and effort on the part of South Australian and Commonwealth Government officers to successfully complete this process (see timeline in Attachment 2). This example, which highlights the lack of flexibility and arduous nature of current processes, exemplifies the potential benefits which could be achieved if Queensland could be persuaded to amend its legislation to follow the procedural approach of other jurisdictions, whereby a permanent exemption can be endorsed by a notice published in the Gazette. Alternatively, a mechanism could be adopted by which, wherever possible, amendments be made by a simple majority of jurisdictions (which would be 6 jurisdictions) or a two-thirds majority (which would be 7 jurisdictions) rather than by unanimous agreement of all 10 jurisdictions as required at present.

Recommendation:

Amendments to the mutual recognition schemes should not require the unanimous agreement of all jurisdictions.

MIKE RANN
Premier
/ 5 / 03

Attachment 1

"Review of the Australian Mutual Recognition Agreement and the Mutual Recognition Act 1992", Report of the Committee on Regulatory Reform Review Group, October 1998.

Recommendation 1

That jurisdictions endorse the continuation of the MRA. Jurisdictions note that clause 7.1.3 of the Agreement governs the continued operation of the MRA.

Recommendation 2

That the MRA **not** be extended to cover regulatory requirements relating to the use of goods, but that the COAG Committee on Regulatory Reform continue to monitor this issue to ensure use requirements are not used to undermine the objectives of the MRA.

Recommendation 3

That the Ministerial Council on Consumer Affairs develop national arrangements for product recalls and product safety bans to ensure consistent approaches between jurisdictions to banning and/or recall of dangerous products.

Recommendation 4

Where jurisdictions are concerned about variations in the standards or other regulatory requirements relating to goods, these issues should be resolved by the relevant Ministerial Council, through the use of the Temporary Exemption or referral mechanism

Recommendation 5

That the Industry Ministers' Council consider carrying out an awareness campaign aimed at raising the awareness among manufacturers and retailers of mutual recognition.

Recommendation 6

That occupational registration authorities consider, where appropriate, the development of a national practising certificate based on mutually agreed registration requirements.

Recommendation 7

That occupational registration authorities put in place formal mechanisms for inter-jurisdictional communication and cooperation to establish a forum in which issues relating to mutual recognition can be discussed and resolved.

Recommendation 8

That jurisdictions make greater use of the referral mechanism contained in the MRA where concerns exist as to the competency of persons registered in other jurisdictions.

Recommendation 9

That governments should consider greater use of *national* competition reviews of occupations where appropriate to reduce the prospects of increasing inconsistency in regulation which reduces mobility of occupations between jurisdictions.

Recommendation 10

In carrying out individual State or Territory National Competition Policy reviews, governments should consider the impact of their recommendations on the mobility of persons in registered occupations under the MRA.

Recommendation 11

That when reviewing occupational registration and business licensing in the context of National Competition Policy reforms, governments should consider separating statutory requirements for occupational registration and business licensing, so as to not restrict the ownership of businesses to those registered to practise in the occupations which relate to the services provided by the business.

Recommendation 12

That the COAG Committee on Regulatory Reform examine the potential for the Mutual Recognition Agreement to be extended to cover business licenses.

Recommendation 13

That the COAG Committee on Regulatory Reform examine the potential to extend the Mutual Recognition Agreement to cover non-traditional, statutory-based forms of occupational regulation such as negative licensing and co-regulation.

Recommendation 14

That Participating Parties maintain the reference to firearms and other prohibited or offensive weapons in the Permanent Exemption Schedule of the *Mutual Recognition Act 1992* (Schedule 1(1)).

Recommendation 15

The Participating Parties maintain the reference to fireworks in the Permanent Exemption Schedule of the *Mutual Recognition Act 1992* (Schedule 1(2)).

Recommendation 16

That the Participating Parties maintain the reference to gaming machines in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 1(3)).

Recommendation 17

That the Participating Parties maintain the reference to pornographic material in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 1(4)).

Recommendation 18

That the Participating Parties maintain the reference to a law of a State regarding quarantine in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 2(1)).

Recommendation 19

That the Participating Parties maintain the reference to a law of a State regarding endangered species in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 2(2)).

Recommendation 20

That the Participating Parties maintain the reference to ozone protection legislation in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 2(3)).

Recommendation 21

That the Participating Parties maintain the Permanent Exemption for the South Australian beverage container deposit scheme, and that the Commonwealth Government amend their mutual recognition legislation to read "*Environment Protection Act 1993*: Part 8, Division 2 – Beverage Containers".

Recommendation 22

That the Participating Parties maintain the reference to a law of Tasmania regarding the possession, sale or capture of fish of a minimum size in the Permanent Exemption Schedule to the *Mutual Recognition Act 1992* (Schedule 2(10)).

Recommendation 23

That the Participating Parties maintain the exception relating to the manner of sale of goods.

Recommendation 24

That the COAG Committee on Regulatory Reform assess the issue of inconsistent packaging and labelling requirements for drugs and poisons, and if appropriate, develop for consideration by Heads of Government, amendments to the *Mutual Recognition Act 1992* to ensure that the scheme does cover packaging and labelling requirements for drugs and poisons.

Recommendation 25

That the exception relating to the transport, storage and handling of goods, and inspection of goods, be retained.

Recommendation 26

That the COAG Committee on Regulatory Reform examine the potential for developing national standards for the transport, storage and handling of goods for which there is variable regulation across jurisdictions.

Recommendation 27

That the COAG Committee on Regulatory Reform develop for consideration by Heads of Government, amendments to the *Mutual Recognition Act 1992* aimed at ensuring that packaging and labelling requirements relating to transport, storage and handling, in particular, requirements relating to Material Safety Data Sheets are covered by the mutual recognition principle.

Recommendation 28

That in regard to occupations, the COAG Committee on Regulatory Reform consider carrying out a survey of occupational registration agencies at least once before the next five year review.

Recommendation 29

That in regard to goods, the Industry Ministers' Council consider alternative means of gathering information regarding the impact of the MRA on goods, including the use of ABS surveys.

Recommendation 30

That further reviews of the MRA, to consider potential improvements to the scheme, take place every 5 years. That the next review take place in 2003 in conjunction with the first review of the TTMRA.

Attachment 2

SA needed to fix a simple drafting error in the TTMRA. It took over 2 years to fix and considerable effort by officers of the South Australian Government and the Commonwealth Industry Department.

1/5/98	TTMRA came into effect
June 1999	SA realised the permanent exemption for offensive weapons had failed to cite the section of SA's Summary Offences Act dealing with knives and was therefore restricted to firearms only, which wasn't what was intended.
23/9/99	SA put in place a temporary exemption for knives.
23/3/00	SA Premier wrote to PM to request a permanent exemption.
20/4/00	PM replied saying he agreed with the permanent exemption and had written to Premiers, Chief Ministers and the New Zealand PM seeking same.
mid 2000	All jurisdictions advised SA of their support for a permanent exemption, but Qld advised it had to pass an Act to endorse the required regulation (in other jurisdictions the endorsement simply requires a notice in the Gazette).
22/9/00	Temporary exemption expired and was extended for a year.
16/11/00	SA endorsed permanent exemption.
24/11/00	NSW endorsed permanent exemption.
30/11/00	New Zealand endorsed permanent exemption.
14/12/00	Vic endorsed permanent exemption.
21/12/00	ACT endorsed permanent exemption.
Early 2001	Expected date for endorsement by Tas and NT.
Feb 2001	Qld election delayed its remedial action.
23/8/01	Commonwealth gazetted the permanent exemption.
27/8/01	Commonwealth Industry Minister wrote to SA Premier advising of permanent exemption.