CI 2003/00475

Mr Tony Hinton
Commissioner
Productivity Commission
PO Box 80
BELCONNEN ACT 2617

Dear Mr Hinton

PRODUCTIVITY COMMISSION 2003 REVIEW OF THE MUTUAL RECOGNITION AGREEMENT AND THE TRANS TASMAN MUTUAL RECOGNITION ARRANGEMENT - VICTORIAN INPUT

Consultation with all Victorian Departments has identified a number of issues for inclusion in Victoria's input to the Productivity Commission's 2003 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA). Please note that this input does not represent the views of the Victorian Government; rather it consists of issues Victorian agencies wish to raise within the context of the review and to aid and inform discussion. The identified issues are:

Services

- Registration of Professions
- Consumer Affairs: Business Licensing and Regulation
- Legal Profession
- Regulation of Private Security Arrangements
- Dental Health Services
- Early Childhood Services
- Optometry and Physiotherapy Services
- Minerals and Petroleum
- Teachers

Please refer to **Attachment 1** for specific comments.

Your details will be dealt with in accordance with the *Public Records Act* 1973 and the *Information Privacy Act* 2000. Should you have any queries or wish to gain access to your personal information held by this Department please contact our Privacy Officer at the above address.

Goods

- Vehicles
- Consumer Protection Regulation
- Firearms and Other Prohibited or Offensive Weapons
- Fisheries and Agriculture
- Pressure Vessels

Please refer to **Attachment 2** for specific comments.

A contribution to the discussion on possible improvements in the operation of the mutual recognition schemes, and the potential for expansion of the scope of the schemes, is detailed in **Attachment 3**.

In your letter of 17 April 2003 to Mark Duckworth you requested a list of all occupations registered and/or licensed under Victorian legislation. This information is at **Attachment 4.**

I understand that you have requested copies of the legal advice relating to the interaction of mutual recognition legislation and criminal record checks obtained by the Business Licensing Authority and the Victorian Institute of Teaching. This documentation is at **Attachment 5** and **Attachment 6** respectively. Please note, however, that **Attachments 5 & 6** are being forwarded to you in confidence and are not to be made publicly available.

I understand that you have also requested comments on a tentative proposal from the Productivity Commission for a 5 year interregnum for the exception regarding the 'use of goods', following which the exception will then be reassessed. The Department of Premier and Cabinet considers that the 'use of goods' issue is a perennial problem, primarily because any move to alter requirements on how goods are used needs to take account of localised issues regarding environmental, social and economic needs, and consequently, a model that will be suitable within and across all jurisdictions will be difficult to achieve. However, we would encourage the Productivity Commission to undertake further investigation on the proposal.

If you have any queries or require further information regarding these comments please contact Callum Ingram, Senior Policy Adviser, Government Branch, Department of Premier and Cabinet, via telephone (03 9651 1247); fax (03 9651 5071) or email him at Callum.Ingram@dpc.vic.gov.au.

YOURS SINCERELY

TERRY MORAN

Secretary

SERVICES

Please note that this input does not represent the views of the Victorian Government; rather it consists of issues Victorian agencies wish to raise within the context of the Productivity Commission's 2003 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA).

Registration of Professions

There is a need for continued effort in the development of a national approach to reduce impediments to labour mobility. Limitations on the mobility of some professions (for example, medical practitioners) persist due to inconsistencies in the detailed operation of registration systems between jurisdictions. In other cases (for example speech therapists), partial registration limits the operation of mutual recognition arrangements.

Consumer Affairs: Business Licensing and Regulation

Occupational groupings within the Victorian Department of Justice's Consumer Affairs, Gaming and Racing portfolio that are of particular relevance in terms of mutual recognition are liquor licensing, real estate agents, motor car traders and travel agents.

It is important that State and Territory regulators recognise the fact that a number of the markets in which they intervene are now largely national markets. Policy consistency across jurisdictions is vital for these markets' efficient operation in the consumer interest. Mutual recognition is one way of overcoming the obstacles created by a narrow, single-state focus, but it appears to have had only a limited impact.

There is a strong case both for expansion of the mutual recognition schemes and active exploration of other approaches. For example, the Standing Committee of Consumer Affairs has begun to examine the potential for a national regulatory regime for estate agents. There has been steady use of the MRA by estate agents, with around 550 licences issued to individuals and around 350 "agent's representatives" recognised in Victoria since 1993.

It appears that apart from the estate agents licensing regime, none of the other licensing schemes within the Victorian Department of Justice's Consumer Affairs, Gaming and Racing portfolio have received applications under the mutual recognition schemes.

In the case of liquor licensing, most licences are clearly not occupational licences, being tied to particular premises – a licensee wishing to sell from new premises must apply from the beginning and is no better position than a non-licensee.

In several other cases, it may be that applicants assume that the licences are not occupational licences because what they entitle a person (or corporation) to do is be the proprietor of a business of a given type – performing the work required in that type of business does not, in itself, require a licence. A further likely explanation – for example, with various categories of employee licence under the gaming legislation – is simple lack of awareness, since neither the licensing bodies nor, it seems, any other agencies, actively publicise mutual recognition.

Legal Profession

Mutual recognition principles have been incorporated in the *Legal Practice Act* 1996, reducing barriers to practice by enabling interstate practitioners to practise in Victoria based on their

qualification to practise in other jurisdictions. No additional examination or qualification requirements apply. However, consistent with the requirements for Victorian practitioners, interstate practitioners must obtain practising certificates, insurance and meet all other Victorian regulatory requirements in relation to legal practice in this State.

Despite these improvements, the current provisions which implement mutual recognition principles still impose administrative and costs burdens on practitioners who wish to practise in more than one jurisdiction. For example, each practitioner must apply for a practising certificate in each jurisdiction in which he or she practises.

Currently the Standing Committee of Attorneys-General (SCAG) is working towards national legal profession model laws, to further harmonise regulatory requirements in the various jurisdictions. Existing State and Territory regulatory systems will be maintained. The project being undertaken by SCAG recognises the benefits of removing barriers to national practice (to facilitate national practice and competition in the global market), but is not intended to result in reducing regulatory standards to the 'lowest common denominator'. Rather, it seeks to address those areas where the current fragmentation of regulation is dysfunctional. The national legal profession model laws project will seek to build on the mutual recognition approach to remove remaining barriers to practice.

Under the proposed model laws it will no longer be the case that each jurisdiction must recognise other jurisdictions' registered practitioners. Rather, registration in one jurisdiction will be sufficient to enable practitioners to practise elsewhere in Australia, without the need to be separately registered. Effectively, there will be a national practising certificate. Other regulatory requirements of the jurisdictions in which the practitioner practises will also need to be satisfied, although in a number of cases only the regulatory requirement of the practitioner's 'principal place of practice' will apply. This will improve the administrative efficiency of regulation and will be an advance on the previous operation of the mutual recognition principles. One issue that will need to be addressed in the new scheme will be to ensure that actions taken by regulatory bodies is recognised in all other jurisdictions.

Regulation of Private Security Agents

Victoria Police considers that the application of mutual recognition principles to the private security industry is problematic. This arises because of the lack of consistency in relation to training requirements. The various jurisdictional licensing schemes which operate across the States, Territories and New Zealand vary, for example, from those which prescribe a course of training (e.g. NSW) to those where the standard is that which is considered "appropriate" (e.g. SA) to others where no standard is prescribed (e.g. ACT).

It is therefore possible for a person to move between States, or from New Zealand, and to gain a licence under mutual recognition without meeting the training or competency requirements of the second jurisdiction. This undermines jurisdictional standards, and could result in untrained personnel working in high risk areas where the clear intent of the local legislation is not to allow it.

In November 2002 the Australasian Police Ministers' Council endorsed a proposal to address this issue through the development of appropriate competency standards for private security industry licensing, for consideration by the Council as occupational standards under the MRA and the TTMRA.

Dental Health Services

There is a difference between Australia and New Zealand's recognition of overseas dental qualifications. Currently only United Kingdom, Ireland and New Zealand dental degrees are recognised by the Australian Dental Council (ADC) for automatic registration in Australia. The New Zealand Dental Council takes a broader approach. The Victorian Department of Human Services (DHS) sees merit in the New Zealand approach and has asked the ADC via the Dental Practice Board of Victoria (DPBV) to consider adopting the same process of recognising overseas dental qualifications.

Mutual recognition arrangements with New Zealand are working well for the delivery of oral health services in Victoria. If a New Zealand registered dentist applies for registration in Victoria, the ADC and DPBV will recognise the dentist's qualifications, regardless of country of origin. Recruiting dentists via this process assists Victoria (and other States/Territories) to address the critical shortage of dentists in Australia.

Regarding protection of the public, there have been no reported cases of differing standards between New Zealand registered dentists and dentists with qualifications from Australia, United Kingdom and Ireland.

Early Childhood Services

Current Victorian legislation, the *Children's Services Regulations* 1998 (R25), outlines the requirements for qualified staff in licensed children's services. There are also requirements in the Victorian Department of Human Services Preschool Funding and Policy Guide around approved early childhood teacher qualifications.

The current Victorian process is to have an outside agency review all overseas qualifications for equivalence to our requirements. Victoria's DHS would be particularly concerned about accepting mutual recognition of New Zealand early childhood qualifications as several of these have been currently assessed as not equivalent.

Optometry and Physiotherapy Services

Victoria's DHS supports the concern of the Optometrists Registration Board of Victoria and the Australian Council of Physiotherapy Regulating Authorities regarding the "forced" registration of practitioners in Australia who are registered in New Zealand by virtue of them being registered in Britain. We understand that both bodies have already made submissions to the Productivity Commission.

While both bodies have some concerns regarding the suitability of the qualifications gained by British trained practitioners, they are very concerned about practitioners from other EEC member countries, who gain British registration under EEC mutual recognition arrangements, then become registered in New Zealand by virtue of their British registration, then become eligible for registration in Australia through the provisions of the TTMRA and MRA.

Both bodies and DHS are concerned at the potential lowering of service standards and expertise that could come about due to practitioners from EEC countries with lower standards of qualification than our own, being able to register here and practice. It is also claimed that locally trained graduates are being discriminated against in becoming registered compared to the overseas trained practitioners who utilise the EEC/TTMRA/MRA route.

Minerals and Petroleum

Victoria's Department of Primary Industries (DPI) regulates the Mining, Extractive and Petroleum industries for OH&S and the environment. DPI processes applications for mutual recognition for Quarry Managers, Mine Managers and persons that hold a licence to use explosives that want to transfer their qualifications to other States and vice versa. The secretary to the Quarry Managers Advisory Panel coordinates the applications for mutual recognition. The administration of MRA and TTMRA has been incorporated in the quarry management certification and does not greatly impact on resources.

The *Extractive Industries Development Act* 1995 (EIDA) outlines a process for persons to apply to the Secretary for a quarry manager's certificate. A Quarry Manager's Advisory Panel has been established to provide advice on matters pertaining to the certification of persons to manage extractive industry operations. The panel consists of key stakeholders including industry bodies, Boxhill TAFE and the Institute of Quarries.

DPI's position is that Government should not be involved with certification of quarry managers and certification will be phased out with the next amendment of EIDA. The Mineral Resources Development Act 1990 has already been amended so that certification of mine managers is no longer required. The National Competency Standards for the extractive and minerals industries can be used by industry to maintain consistent standards across all the jurisdictions. Most of States and Territories are moving away from certification.

The licensing of storage, manufacturing and use of explosives in the mining and extractive sectors will continue to regulated by DPI under the Dangerous Goods (Explosives) Regulations 2000. The Victorian regulations and standards are generally consistent with other jurisdictions.

DPI has advised that it appears that the administration of the MRA and TTMRA has generally caused little concern across the jurisdictions. There was one incident where Queensland rejected a person's underground coal mining qualification as it was obtained in South Australia. The issue went to the courts and ended in Queensland losing the case. Another case involving a mutual recognition request for an unrestricted quarry manager's certificate from Victoria to manage an open cut coal mine in NSW is still pending.

The impact and relevance of the MRA and TTMRA has been discussed with industry associations including the Construction Materials Association (CMPA), the Extractive Industry Association of Victorian (EIAV) and the Victorian Mining and Energy Council (VMEC.) All industry associations were supportive of the MRA and TTMRA and had no specific issues or concerns. For those organisations with operations across the jurisdictions, it is certainly desirable to have transportable qualifications and competencies.

VMEC indicated that it is supportive of jurisdictions moving away from certification and statutory positions and would not support any amendments that would reverse the trend. CMPA indicated that it would not support any amendments that would water down competencies or qualifications across jurisdictions.

Teachers

The Victorian Institute of Teaching is a statutory authority established under the *Victorian Institute of Teaching Act* 2001. The Institute became fully operational on 1 January 2003.

The Victorian Institute of Teaching was established with a range of functions including to provide for the registration of teachers in schools in Victoria; regulate the conduct of those teachers; provide a procedure for handling complaints about teachers registered or permitted to teach under the Act; recognise and promote the profession of teaching; approve teacher education courses; and recommend for the approval of the Minister, qualifications, criteria and standards for the registration and renewal of registration of teachers in schools in Victoria.

The MRA and TTMRA affect the processes and policies of the Victorian Institute of Teaching in a number of ways:

- the Institute's application form invites teachers to apply for registration with the Institute under either MRA or TTMRA where they are entitled to do so;

- these applications are assessed under the provisions of the MRA and TTMRA and applicants are afforded registration with regard to the requirements of these; and

- teachers who apply for registration under mutual recognition principles are granted registration at the comparable level to which they were entitled in their former jurisdiction i.e. if they are provisionally registered in their former jurisdiction, they will be provisionally registered in Victoria.

The Victorian Institute of Teaching would confirm that the MRA and TTMRA are effective in enhancing teaching workforce mobility between the Australian States and New Zealand and, in the majority of cases, would be seen to be of benefit to both the individual and the

profession across boundaries. The Institute believes that its processes have contributed to this outcome.

The Victorian Institute of Teaching has noted, however, that 11.5% of teachers awarded registration under the mutual recognition arrangements would not meet the qualification requirements for teacher registration in Victoria. Given the strength of research evidence demonstrating the fundamental importance of qualified, competent and motivated teachers to the improvement of student outcomes, it is a matter of concern that the mutual recognition principles do not provide the necessary flexibility to recognise different qualification requirements of some States.

While the impact on student outcomes is a prime concern, concerns also exist that under the mutual recognition arrangements local teachers are not afforded the same treatment as interstate or New Zealand teachers when seeking registration in Victoria.

The Victorian Institute of Teaching notes that the Ministerial Council on Education Training and Youth Affairs has established a Teacher Quality and Educational Leadership Taskforce to establish a National Framework for Standards for Teaching. The Institute recommends that a key priority under such a Framework should be to establish consistent or agreed standards (including qualifications) for entry to the teaching profession.

The *Trans-Tasman Mutual Recognition Act* 1997 (Cwlth) Division 2 – Entitlement to registration, s18 Notification to local registration authority provides that:

> *A person who is registered in New Zealand for an occupation may lodge a written notice with the local registration authority of an Australian jurisdiction for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the Trans-Tasman mutual recognition Principle.*

The Victorian Institute of Teaching believes that the extent of the written notice required under the MRA and TTMRA is inadequate given the requirements of the State Acts governing the implementation of teacher registration. For example:

- The *Victorian Institute of Teaching Act* 2001 provides that the Institute Council may require a Criminal Record Check prior to registration. Neither the MRA nor the TTMRA allow for such inquiries to take place. Mandatory Criminal Records Checks (CRC) have been a requirement for registration in the non-government sector and for employment in government schools in Victoria since 1996. The Institute does not delay the registration of a teacher under mutual recognition awaiting a CRC, but it is still required. A change to this part would not be onerous or restrictive but would ensure the safety of our young people and continuing respect for our profession.

- The *Victorian Institute of Teaching Act* 2001 requires that the Institute maintain a public register of teachers. The specific particulars to be included in the register include the teacher's qualifications and the professional expertise held by the teacher. This is not provided for under the requirements for entitlement under the TTMRA. The Institute does not delay the registration of a teacher under mutual recognition awaiting advice concerning qualifications and areas of expertise, but it is still required to enable the Institute to meet its statutory obligations.

For these reasons, teachers are asked to provide a greater level of information to the Institute than is required under either the Act or the TTMRA. The teacher's registration is not dependent on the provision of this information at the point of registration; however they are expected to provide such information.

ATTACHMENT 2

GOODS

Please note that this input does not represent the views of the Victorian Government; rather it consists of issues Victorian agencies wish to raise within the context of the Productivity Commission's 2003 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA).

Vehicles

Under the MRA, vehicles legally registered in another jurisdiction are acceptable for registration in Victoria. This includes modified vehicles where the modifications have been accepted by that jurisdiction's registering authority. However, vehicles from other jurisdictions that have unapproved modifications are not acceptable for registration in Victoria. Further, certificates approving vehicle modifications that have been issued by an Engineering Signatory from another jurisdiction are not accepted by VicRoads unless that Signatory is also a VicRoads Vehicle Assessment Signatory Scheme (VASS) signatory. This is necessary to protect VicRoads from any legal liability that may arise as a result of registering the vehicle. Each VASS Signatory, in signing the VASS service agreement has agreed to indemnify VicRoads against any such claims and to carry appropriate professional indemnity and public liability insurance for that vehicle.

Vehicles have been the subject of a temporary exemption from the TTMRA from its inception. This was to allow time for the development of Trans Tasman Vehicle Safety Standards and for New Zealand to develop an acceptable vehicle certification system. However, despite several extensions this process has not been able to be completed. In June 2002, the Commonwealth Department of Transport and Regional Services, at the meeting of its Technical Liaison Group on Vehicle Standards, advised that a draft Regulatory Impact Statement for permanently exempting vehicles had been prepared for circulation and approval. VicRoads supports the permanent exemption of vehicles from the TTMRA.

Consumer Protection Regulation

Consumer product regulations were subject to a special exemption from the TTMRA, to allow for a systematic program (through the Consumer Product Advisory Committee) to examine differences between product regulation in Australia and New Zealand and identify cases where a permanent TTMRA exemption or a harmonisation of standards might be preferable to simple mutual recognition. This process is now nearly complete, with only one regulation still subject to special exemption (Child Restraints for Motor Vehicles). No Victorian regulations were proposed for permanent exemption.

There is, however, potential for improvement for mutual recognition in this area. It needs to be recognised there will always be pressures for unilateral action on product safety issues. Mutual recognition does create an automatic constraint, by rendering a local ban or standard ineffective for products imported through a jurisdiction with which the regulating jurisdiction has mutual recognition arrangements. However, this may not be well known to producers and distributors, and it would be unrealistic to expect regulators to publicise this option.

Given these limitations of mutual recognition, other ways of promoting uniformity of product standards may prove more effective. The Ministerial Council on Consumer Affairs is currently pursuing a co-operative project to identify an effective means of implementing national consumer product regulation.

Firearms and Other Prohibited or Offensive Weapons

In accordance with the terms of the 1996 National Firearms Agreement, Victoria recognises firearms licences issued in other States and Territories for a period of up to three months. There is also provision to enable the recognition of international licences where appropriate.

After the three month period, a person is required to obtain a Victorian firearms licence. This scheme is designed to ensure that people comply with the safety and security requirements relating to the possession and use of firearms. It also reflects the fact that, while broadly similar, the firearms licensing requirements across the nation are not identical.

The benefits to the community from this current arrangement outweigh the costs to individual licensees from other jurisdictions who intend to reside in Victoria for longer than three months. The arrangement provides the necessary flexibility for competitive shooters entering the jurisdiction for a short period to participate in official competitions, and tourists. For these reasons, the Victorian Department of Justice would not support any change to the current permanent exemption arrangement for firearms under s14(1) of the *Mutual Recognition Act* 1992 and s45(1) of the *Trans-Tasman Mutual Recognition Act* 1997.

Fisheries & Agriculture

Victoria's Department of Primary Industries (DPI) has a particular emphasis on innovation and industry development in the key areas of agriculture, fisheries, minerals and petroleum and regional services. Experiences within DPI have shown that the MRA and TTMRA have generally been well received. DPI officers have found the MRA and TTMRA to be well written, clear and easy to apply. The benefits of the MRA and TTMRA have been positively recognised.

Fisheries

Where the mutual recognition schemes have impacted on the commercial fishing industry, it has been of benefit to those involved. Expected complications with, for example, monitoring and compliance have not materialised. Specific examples include the monitoring of mercury levels in shark imported from interstate and New Zealand that are processed and sold in Victoria. Victorian processors also take crayfish from South Australia and benefit from this trade.

The mutual recognition schemes have also impacted on the Victorian Aquaculture industry with regard to issues such as market access and the translocation of various species with quarantine concerns (pests and disease) - specifically glass eels (Tasmania – Victoria), marron (Western Australia – Victoria), yabbies (Victoria – South Australia), trade in live fish, and importation of pilchards as food for tuna.

Schedule 2, subsection 14(2) item number 10 of the *Mutual Recognition Act* 1992 (Cwlth) states:

> *"A law of Tasmania to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size."*

In the interest of consistency and to minimise exemptions, DPI considers that the Productivity Commission should investigate the possibility of deleting this clause.

Agriculture

It appears that for the dairy industry, the TTMRA is working effectively. For example, the adoption of common food standards has minimised most of the issues.

Although not specifically covered in the TTMRA, an issue of significance to the Victorian dairy industry, is the structure and market position of the New Zealand dairy co-operative, Fonterra, formally the New Zealand Dairy Board. As the near monopoly single exporter of all New Zealand dairy products that account for 34% of world dairy trade, Fonterra is a dominant player in the market. It is likely that Fonterra's position and activities would violate Australia's National Competition Policy principles and contravene the *Trade Practices Act* 1974 (Cwlth). The issues surrounding recognition of trade practice differences between the two countries might be identified as an area for the Productivity Commission to investigate.

In the area of gene technology and labelling there are common safety assessment and labelling requirements in Australia and New Zealand under the Food Standards Australia and New Zealand organisation (FSANZ). The release of viable genetically modified (GM) organisms is subject to separate and different legislation in each country. Separate specific approval is required in each country before such organisms can be released. The current review of the TTMRA should not undermine this capacity for each country to pursue different policies on release of GM organisms.

Under the TTMRA, Schedule 2, the *Agricultural and Veterinary Chemicals Act* 1994 (Cwlth) is listed as permanently exempt, thus allowing different registration and control of use aspects of such chemicals in the two countries. The rationale for this is that "good agricultural practice" is often different and needs to be recognised in the local regulatory regimes. It should be noted however that although these products are exempted, they can be affected as a consequence of amendment to other legislation, in particular, that which governs drugs and poisons. There have been some unintended consequences to agricultural and veterinary chemicals as a result of amendments to drugs and poisons control. For example, amendments to signal headings on drugs and poisons also affected signal headings on agricultural and veterinary chemicals. This change was not well communicated to agricultural interests and resulted in the potential for risk. The Productivity Commission Review of the TTMRA needs to be vigilant to ensure that changes in one area do not increase risks in another.

Pressure Vessels

The Office of Manufacturing in Victoria's Department of Industry, Innovation and Regional Development Department has been advised by industry representatives that the Occupational Health & Safety regulations in New Zealand do not recognise Victorian Workcover approvals on pressure vessels, even though the reverse applies and the countries have adopted the same pressure vessel code (*AS 1210 Unfired Pressure Vessels)*. As a result, Australian pressure vessel manufacturers exporting to New Zealand face an additional expense of independent certification.

ATTACHMENT 3

IMPROVEMENT IN OPERATION AND EXPANSION OF SCOPE

Please note that this input does not represent the views of the Victorian Government; rather it consists of issues Victorian agencies wish to raise within the context of the Productivity Commission's 2003 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Arrangement (TTMRA).

Suggestions for Improvement in Operation

Perhaps building on the National Competition Policy Agreements, Governments could decide to identify and maintain registers of the licensing schemes in their jurisdictions to which mutual recognition applies. Governments could then undertake steps to ensure that the relevant licensing bodies – and agencies charged with advising small businesses about the applicable legal framework – provide public information on mutual recognition. Ideally, there would be tailored information both for those currently operating within the jurisdiction who might wish to move to or expand into another jurisdiction, and for those currently operating in another jurisdiction covered by the mutual recognition schemes. At a minimum, it ought to be possible to make such information easily accessible on the websites of the licensing and advisory bodies.

Potential for Expansion of Scope

It may be possible, whether through revision of the mutual recognition schemes or otherwise, to apply mutual recognition to those parts of these licensing schemes which address the fitness of the person, while retaining local scrutiny of the suitability of premises and the like.

A further major issue to be tackled is business licensing. As noted above, many schemes are directed at the proprietors of a given type of business rather than those undertaking a given type of work. There has probably been a trend towards this type of licensing since the MRA was introduced in 1993, as the concept of the proprietor taking responsibility for the conduct of employees has gained greater acceptance. Although the legislation implementing the mutual recognition schemes makes no distinction between "business" and "occupational" licensing, the restriction of its application to "individuals and occupations carried on by them" suggests that it may not have been intended to cover schemes under which either corporations or individuals may be licensed, solely as proprietors. (Note that the Victorian scheme for estate agents, referred to above, does not fall into this category, as licensed corporations are required to have some individually licensed directors and the licensing criteria for individuals include prescribed occupational training.)

Mutual recognition would have a far greater impact if it were extended to corporations and the business/occupation distinction done away with. However, this will raise major issues which will not always be the same from scheme to scheme. It may therefore be appropriate, as a first step, that particular corporation licensing schemes which are identified as significant to the economy be reviewed individually with a view to greater harmonisation and then be reviewed in terms of mutual recognition subject to appropriate conditions. The schemes for estate agents, motor car traders and travel agents would be the major candidates in the Consumer Affairs portfolio.

Some obvious major issues to be worked through relate to:

- the corporate veil and undisclosed disqualification;
- financial viability testing; and
- a shifting of costs to supervision where barriers to entry are lowered.

Corporate veil

The fitness of a corporation to be licensed depends on the fitness of its directors. Some or all of the directors in office at the point of licensing in the first jurisdiction may have been replaced by the time an application is made under mutual recognition in a second jurisdiction. The legislation would therefore need to allow the licensing authority in the second jurisdiction to check that the current directors were known to and considered fit by its counterpart in the first jurisdiction. For directors who were known and considered fit, there may still need to be an assurance that any conviction which would automatically disqualify the person in the second jurisdiction had been taken into account by the first. For other directors, the second jurisdiction would expect to be able to apply its own usual fitness tests.

Financial viability

Victoria's *Motor Car Traders Act* 1986 includes a financial viability test among its licensing criteria. This reduces the risk of a failing business preserving its cash flow by improperly disposing of consumer funds or assets (vehicles) or dishonouring warranty or other obligations to consumers. This in turn reduces the risk of claims on the Guarantee Fund (financed by licence fees), as well as providing some assurance that licensees will be in a position to reimburse the Fund should a claim be admitted against them.

Whether or not a financial viability test has been applied in the first jurisdiction, the fact that an applicant is licensed there gives no assurance of the financial viability of the proposed business in the second jurisdiction.

Added supervisory costs

Virtually by definition, licensing and registration schemes involve both checking of entrants and supervision of incumbents. To the extent that mutual recognition allows entry in a jurisdiction by applicants whose fitness is less dependable than that of mainstream licensees in that jurisdiction, a greater burden is placed on the agency with supervisory responsibility to monitor and, if necessary, discipline the licensee. This, in turn, adds to the costs which are normally recovered through licensing fees.

The only issue noted here unique to corporation licensing is the corporate veil problem, the others are largely dormant under current arrangements. A much more widespread use of mutual recognition which would follow an extension of scope to corporations would emphatically bring them to light. A cautious, incremental approach would therefore appear advisable.

ATTACHMENT 4

REGISTERED OCCUPATIONS ETC. AND THE RELEVANT REGISTRATION AUTHORITY IN VICTORIA AS AT MAY 2003

Occupation/Certification/Licence	***Registration Authority***
Acupuncturist	Chinese Medicine Registration Board of Victoria
Architects	Architect Board of Victoria
Asbestos Removalist	Victorian Workcover Authority
Auctioneers	Business Licensing Authority
Automotive LPG system installer	Automotive Alternative Fuels Registration Board
Beekeeper (Apiarist)	Department of Sustainability and Environment – Animal Health Operations
Boiler/steam engine/turbineoperator	Victorian Workcover Authority
Bookmakers and bookmakers clerks	The Bookmakers and Bookmakers' Clerks Registration Committee
Boxing/kickboxing trainer	Professional Boxing and Martial Arts Board of Victoria
Boxing/martial arts matchmaker	Professional Boxing and Martial Arts Board of Victoria
Boxing/martial arts promoter	Professional Boxing and Martial Arts Board of Victoria
Boxing/martial arts referee	Professional Boxing and Martial Arts Board of Victoria
Boxing/martial arts/kickboxing contestant	Professional Boxing and Martial Arts Board of Victoria
Chiropodists	Podiatrists Registration Board
Chiropractors	Chiropractors Registration Board
Commercial agents, inquiry agents and security agents	Registrar of Private Agents, Registrar of the Magistrates Court
Competency Certificate assessor (Workcover)	Victorian Workcover Authority
Coxswain	Marine Board of Victoria
Crane/hoist operator	Victorian Workcover Authority
Credit providers	Business Licensing Authority
Crowd controller	Registrar of Private Agents
Crowd controller trainer	Office of Training and Tertiary Education
Dental hygienist/therapist	Dental Board of Victoria
Dental technicians	Advanced Dental Technicians Qualifications Board / Dental Board of Victoria
Dentists	Dental Board of Victoria
Electrical engineer	Building Practitioners Board
Electricians	Office of the Chief Electrical Inspector
Estate agents	Business Licensing Authority (Note: Persons employed by licensed estate agents as their representatives do not require to be licensed. However, under the *Estate Agents Act* 1980 employers are required to ensure that the person they are about to employ is eligible to act as an agents representative.)
Firearms Instructor	Victoria Police- Licensing Services Branch
Firearms/ weapons collector	Victoria Police- Licensing Services Branch
Firearms/ weapons dealer	Victoria Police- Licensing Services Branch
Forklift operator	Victorian Workcover Authority
Fundraisers	Director of Consumer Affiars
Greyhound racing trainer/owner/attendant	Greyhound Racing Victoria
Harness Racing Driver	Harness Racing Victoria

Occupation/Certification/Licence	*Registration Authority*
Horse trainer	Racing Victoria Ltd
Instrument calibrator	Trade Measurement Victoria
Introduction agents	The Introduction Agents Act 1997 requires individuals or corporations to provide a notice of intention to act as an introduction agent to the Business Licensing Authority 30 days before setting up an introduction agency. This is a 'purely' notification scheme and there is no formal approval needed for a person to act as an introduction agent. Some eligibility criteria are applicable however, and a person must not act as an introduction agent if not eligible. The Business Licensing Authority undertakes the necessary probity checks within the 30 days to ensure the person is eligible.
Jockey	Racing Victoria Ltd
Licence to use explosives under Regulation 705 *Dangerous Goods (Explosives) Regulations 2000*	Minerals and Petroleum Regulation, Department of Primary Industries
Marine engine driver	Marine Board of Victoria
Marine engineer	Marine Board of Victoria
Marine skipper/master/chief mate	Marine Board of Victoria
Meat Inspectors	Victorian Meat Authority
Medical practitioners	Medical Board of Victoria
Medical radiation technologists	Medical Radiation Technologists Board of Victoria
Motor car traders	Business Licensing Authority
Nurses	Nurses Board of Victoria
Optometrists	Optometrists Registration Board
Osteopath	Osteopaths Registration Board of Victoria
Pathologist	Pathology Services Accreditation Board
Pest control technician/trainee	Department of Human Services- Pest Control Unit
Pharmacists	Pharmacy Board of Victoria
Physiotherapists	Physiotherapists Registration Board
Pilot (Chemical Rating) (relates to crop dusting and other aerial spraying activities)	Department of Primary Industries
Plumbers, drainers & gasfitters	Plumbers, Drainers and Gasfitters Registration Board
Podiatrists	Podiatrists Registration Board
Prostitution service providers and Brothel managers	Business Licensing Authority
Psychologists	Psychologists Registration Board of Victoria
Pyrotechnician (fireworks)	Victorian Workcover Authority
Quarry Managers (certified under section 39 of the *Extractive Industries Development Act* 1995)	Minerals and Petroleum Regulation, Department of Primary Industries
Rigger/ scaffolder	Victorian Workcover Authority
Second-hand dealers and pawnbrokers	Business Licensing Authority
Solicitors	Supreme Court of Victoria
Stable hand	Racing Victoria Ltd
Taxi driver/chauffeur	Victorian Taxi and Tow Truck Directorate
Taxidermist (wildlife)	Department of Sustainability and Environment- Parks Flora and Fauna
Teachers	Victorian Institute of Teaching (for both government non-government schools)
Travel agents	Business Licensing Authority
Truck driver	Roads Corporation (VicRoads)

Occupation/Certification/Licence	*Registration Authority*
Vehicle tester	Roads Corporation (VicRoads)
Veterinary practitioners	Veterinary Practitioners Registration Board of Victoria
Wildlife controller	Department of Sustainability and Environment - Parks Flora and Fauna
Wildlife dealer	Department of Sustainability and Environment - Parks Flora and Fauna
Vehicle tester	Roads Corporation (VicRoads)

Please Note:

Pre-school Teachers

There is a Victorian Government policy commitment to have pre-school teachers registered, and work is currently underway looking at options for this.

Finance Brokers

Finance Brokers do not need a licence, but under the *Consumer Credit (Victoria) Act* 1995 they are required to meet specified eligibility criteria. Furthermore, if an individual or corporation is disqualified from engaging in finance broking the 1995 Act requires that a permission application to be made to the Business licensing Authority if the individual or corporation intend to practice as a finance broker.

Fisheries

There are occupations licensed under the *Fisheries Act 1995* and Regulations that do not fall under the MRA or TTMRA schemes as they only apply within Victorian (and Commonwealth under OCS agreements) waters. Please refer to the table below for a description and complete list of Victorian Licences and Permits issued by Fisheries Victoria.

Licence	Agency	Categories
Abalone Fishery	Fisheries Victoria	C
Bait (General) Fishery	Fisheries Victoria	C
Corner Inlet Fishery	Fisheries Victoria	C
Eel Fishery Type A	Fisheries Victoria	C
Gippsland Lakes Fishery	Fisheries Victoria	C
Gippsland Lakes Fishery (Bait)	Fisheries Victoria	C
Gippsland Lakes (Mussel Dive) Fishery	Fisheries Victoria	C
Lake Tyers Fishery (Bait)	Fisheries Victoria	C
Mallacoota Lower Lake Fishery (Bait)	Fisheries Victoria	C
Ocean Fishery	Fisheries Victoria	C
Port Phillip Bay (Mussel Bait) Fishery	Fisheries Victoria	C
Purse Seine (Ocean) Fishery	Fisheries Victoria	C
Purse Seine (Port Phillip Bay) Fishery	Fisheries Victoria	C
Rock Lobster Fishery	Fisheries Victoria	C
Giant Crab Fishery	Fisheries Victoria	C
Scallop (Ocean) Fishery	Fisheries Victoria	C
Snowy River Fishery (Bait)	Fisheries Victoria	C
Sydenham Inlet Fishery (Bait)	Fisheries Victoria	C
Trawl (Inshore) Fishery	Fisheries Victoria	C
Westernport/Port Phillip Bay Fishery	Fisheries Victoria	C
Wrasse (Ocean) Fishery	Fisheries Victoria	C
Boat (registration)	Fisheries Victoria	C
Aquaculture (Crown Land)	Fisheries Victoria	A
Aquaculture (Crown Land) Type A	Fisheries Victoria	A
Aquaculture Multiple Waters (Private Land)	Fisheries Victoria	A
Aquaculture (Private Land)	Fisheries Victoria	A
Fish Receivers' (Abalone)	Fisheries Victoria	R
Fish Receivers' (Scallop)	Fisheries Victoria	R
General Permit - Commercial	Fisheries Victoria	C
General Permit – Developmental	Fisheries Victoria	C
General Permit – Developmental (banded morwong)	Fisheries Victoria	C
General Permit - Display	Fisheries Victoria	Rec
General Permit - Eel	Fisheries Victoria	C
General Permit - Exemption	Fisheries Victoria	C
General Permit - Fish Liberation	Fisheries Victoria	Rec
General Permit - Aquaculture	Fisheries Victoria	A
General Permit - Research	Fisheries Victoria	Rec
General Permit - Special	Fisheries Victoria	C
General Permit - Experimental	Fisheries Victoria	Rec
General Permit - Developmental (sea urchins)	Fisheries Victoria	C
Noxious Aquatic Species Permit	Fisheries Victoria	C / Rec
Protected Aquatic Biota Permit	Fisheries Victoria	C

Definitions

Commercial Access (C)

Commercial fishery access licences are issued to commercial fishers for Victorian waters. They comply with the *Fisheries Act 1995, Fisheries Regulations 1998* and subordinate instruments. The licences are renewed annually.

Aquaculture Licences (A)

Aquaculture licences are issued to suitable applicants wishing to engage in the breeding of certain marine and freshwater species. Licences are renewed annually.

Receivers (processors) (R)

Fish Receivers licences are issued to operators of processing plants for abalone and scallop. They are the only types of fisheries that require the operator to be licensed.

Permits (P)

Permits are issued by the Department of Primary Industries and relate to commercial activities and recreational activities. Permits allow certain activities that are not allowed under normal regulatory conditions.

Recreational (Rec)