Ted Quinlan MLA

DEPUTY CHIEF MINISTER

TREASURER MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM

MINISTER FOR SPORT, RACING AND GAMING

MEMBER FOR MOLONGLO

Mr Tony Hinton
Commissioner
MRA Review
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Hinton

2003 REVIEW OF THE MUTUAL RECOGNITION AGREEMENT AND THE TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT

Thank you for the opportunity to make a submission to the 2003 Review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). This submission presents the ACT Government's views on the MRA and TTMRA. The Appendices to this letter present further relevant details and responsible contacts.

MRA

The ACT Government believes that the MRA is operating efficiently in the ACT and between the States and Territories and has been effective in increasing competition and consumer choice.

Improving the operation of the MRA

Whereas the general consensus is that MRA is operating well, the ACT Government believes that there is room to improve the operation of the Agreement. In 2002, the ACT Government, along with other jurisdictions, had difficulty in banning the sale of a dangerous consumer product. The issue to be addressed is how governments can act quickly to ban dangerous goods when permanent action is urgently required and where provisions under the MRA prevent such action being taken without the unanimous agreement of participating parties (Appendix 1).

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0001 Fax (02) 6205 0135

The Office of Regulation Review (ORR) in its 1997 report *Impact of Mutual Recognition on Regulations in Australia: A Preliminary Assessment* suggested that mutual recognition could be extended in Australia to cover services. By creating a national market for services, the services sector being the fastest growing part of the Australian economy, mutual recognition can create new opportunities for business and consumers. It can increase competition, reduce costs and lead to a more dynamic and responsive economy, thus lifting Australian competitiveness.

TTMRA

The ACT Government believes that in general the TTMRA is operating well and that good progress has been made towards harmonisation in the special exemption areas. Several outstanding issues are raised in Appendix 2.

In his latest letter dated 7 March 2003, the Prime Minister suggested rolling over the current special exemptions until April 2004 to ensure the integrity of the Productivity Commission Review, and consideration of the Productivity Commission's report to COAG and New Zealand in October 2003. The ACT Government therefore recommends that the Productivity Commission review progress under the cooperation programmes to date with a view to streamlining administration post 2003. The following options could be considered:

- moving special exemptions to permanent exemptions where appropriate; or
- introducing a longer roll-over period, which better reflects the likely timeframes for the resolution of outstanding matters.

RECOMMENDATIONS

It is recommended that the Productivity Commission:

- Investigate ways of ensuring that jurisdictions can act quickly to ban dangerous goods when permanent action is urgently required;
- Consider and put forward a proposal to extend the scheme to cover services;
- Consider the need to streamline the administration of cooperation programs.

The contact officer for this matter is Mr Niclas Jonsson. Mr Jonsson may be contacted on telephone 6205 0686, fax 6207 0033 or email niclas.jonsson@act.gov.au.

Yours sincerely

Ted Quinlan MLA

APPENDIX 1

IMPROVING THE OPERATION OF THE MRA

Following an incident in 2002, the ACT along with other jurisdictions had difficulty in banning the sale of a dangerous consumer product.

A consumer product safety order (Notifiable Instrument number NI 2002-380) was signed by the ACT Attorney General on 8 December 2002. It was notified on the Legislation Register on 12 December and was effective from 13 December 2002. A copy of the order and explanatory statement is accessible at: http://www.legislation.act.gov.au/ni/2002-380.

Before the consumer product safety order could be made, the Department had to seek a regulation under the *Mutual Recognition (Australian Capital Territory) Act 1992*. This added significantly to the time it took to finalise the consumer product safety banning order exposing consumers to risk of physical injury or death.

This regulation only provided a temporary 12 month exemption, but it was noted that there is scope under the MRA for a permanent exemption. A permanent exemption was not possible at the time because the unanimous consent of all the signatories to the MRA is required before a product or legislation can be permanently exempted.

The ACT Government notes that the issue of banning and recall of goods was raised in the MRA Legislation Review 1998 which recommended 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. The Productivity Commission Review presents a timely opportunity for such national arrangements to be developed.

Background

The ACT *Mutual Recognition Act 1992* and
Product Safety Orders under the ACT *Fair Trading Act 1992*.

Section 9 of the ACT *Mutual Recognition Act* (the Act) provides that if the goods may lawfully be sold in the State where they are produced or imported they may, by application of the mutual recognition principle, be sold in another jurisdiction without the need for compliance with further requirements. Section 10 sets out those requirements.

Issues

The effect of these provisions means that as long as the goods may lawfully be sold in the State where they are manufactured or imported section 10 operates to prevent the application of ACT laws to the goods. This has the effect of preventing the ACT from banning goods under the product safety provisions of the ACT *Fair Trading Act 1992* (where those goods are brought into the ACT from another jurisdiction) unless those goods have first been banned by the jurisdiction where the goods were manufactured or imported.

The exceptions to the mutual recognition principle provided for under section 11 will not apply so as to allow a banning order to operate because the exceptions in this section relate only to specific situations:

- the manner of sale or conduct of the business;
- transportation, storage and handling (but only where the laws apply to all goods produced in or imported into the Territory and are directed at health and safety or environmental pollution); and
- inspection (but only where the laws apply to all goods produced in or imported into the Territory and are directed at health and safety or environmental pollution).

Section 15 of the Act provides for a temporary exemption from the provisions of Part 2 of the Act relating to goods. This section provides that Part 2 does not apply to the sale of goods in the ACT, or affect laws of the ACT, which have been declared by or under an Act or regulation to be goods or laws to which section 15 applies.

There are two further conditions in this section:

- the exemption will only have effect where its substantial purpose is to protect the health and safety of persons in the Territory or to prevent, minimise or regulate environmental pollution; and
- the exemption cannot operate for longer than 12 months or an aggregate of 12 months, and includes any previous exemption.

This section provides a temporary solution, but has a number of serious drawbacks:

- the goods cannot be effectively banned on a permanent basis as the exemption can only operate for up to 12 months;
- a separate regulation has to be passed for each good to be banned; and
- exempting the *Fair Trading Act* itself would have meant that on the expiry of the exemption, the ACT would be back in the original position of being unable to ban dangerous products, unless the goods had first been banned in the jurisdiction of manufacture or importation.

Section 14 provides that Part 2 of the Act does not apply to the goods specified in Schedule1 or affect the operation of the laws described in Schedule 2.

For further information, please contact:

General Law Group
Policy & Regulation Division
ACT Department of Justice & Community Safety
62070524

APPENDIX 2

THE OPERATION OF TTMRA

ROAD VEHICLES

Vehicle standards for new vehicles are the responsibility of the Commonwealth, under the Motor Vehicles Standards Act 1989. Road vehicles made in, or imported into, Australia must meet Australian Design Rules. The standards for new vehicles are reflected in State regulations applying to the in-service use of vehicles. Effectively, States and Territories are able to register vehicles if they meet the Commonwealth standards applicable to date of manufacture.

The TTMRA continues to contain an exemption for motor vehicle product. The most recent report on the TTMRA that was required to be presented to the Prime Minister by 31 January 2003 included a recommendation that a permanent exemption from the TTMRA would be sought for automotive product.

There are significant differences between the regulatory controls of how a vehicle is accepted for use in each country. Australia has a whole-of-vehicle compliance certification scheme assuring that vehicles meet all the Australian Design Rules (ADRs) applicable to the vehicle, whereas New Zealand accepts automotive product from a number of different markets (i.e. “meets a standard somewhere” approach). The ADRs are now a very mature set of standards and have to a large extent been harmonised with the United Nations Economic Commission for Europe (UN ECE) Regulations. Removing the exemption for vehicle product under the TTMRA would leave the ACT in the position of having to try to refuse registration to vehicles that have been legitimately allowed (under the TTMRA) into the country. In many cases these vehicles will not meet the standards that have been agreed in Australia that should apply to those vehicles. It is very likely that any ACT refusal would be appealed and it is likely that any ACT refusal to register the vehicle would be overturned. As a small jurisdiction with limited resources, we could become an easy target for owners and suppliers of such vehicles.

Examples of areas where there are significant differences in vehicle standards between Australia and New Zealand, where the standard in Australia is significantly higher, includes:

- occupant protection including the restraint of children and infants;
- emission control;
- lighting standards; and
- theft protection.

Allowing free trade of automotive product to Australia from New Zealand would significantly reduce the safety of the Australian vehicle fleet in a very short space of time as vehicles that do not meet the current ADR requirements are significantly cheaper than product currently available in Australia. There are also implications for the Australian motor vehicle industry should cheap vehicles have ready access to the Australian market via the TTMRA.

For further information, please contact:

Road Transport
ACT Department of Urban Services
62076190

CHEMICAL COOPERATION PROGRAM

It should be noted that the Chemicals Cooperation Scheme is not of major significance to the ACT. Most assessment activities would occur before chemicals reach the ACT.

There are five matters of concern under the Chemicals Cooperation Program that mean that continuing exemptions will be necessary from the TTRMA:

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

Notification and assessment of industrial chemicals

There are fundamental differences in the regulation of industrial chemicals in Australia compared with New Zealand. Significant amendments to both Australian and New Zealand laws would be necessary to allow mutual recognition between Australia and New Zealand, and neither government is likely to agree to make these changes in the near future. Therefore, the report recommends that a further 12-month special exemption be granted from the TTRMA for the notification and assessment of industrial chemicals.

Poisons scheduling

Similarly, different approaches to poisons scheduling in Australia and New Zealand mean that mutual recognition is not currently workable. Harmonisation of the legal framework is necessary before mutual recognition, otherwise mutual recognition may lead to labelling differences for poisons that increase risks to consumers.

Material Safety Data Sheets (MSDSs)

Both Australia (through the National Occupational Health and Safety Commission) and New Zealand will be introducing new requirements for material safety data sheets in 2003. Mutual recognition will be possible after this, but a further 12 month special exemption is required until these new requirements are developed and implemented.

Inner Labelling of Dangerous Goods

Australia is currently revising the Australian Dangerous Goods Code. The time frame for completion of this project is not settled, but this should occur within the next two years. It is expected that inner labelling requirements for dangerous goods between Australia and New Zealand will be aligned after the revisions to the Australian Code are complete.

However, there will also need to be changes to State and Territory dangerous goods legislation following the Code work to implement the new changes. As legislation will need to be amended across jurisdictions in Australia, it is not expected that mutual recognition will be possible in this area for several years.

Explosives

The report advises that the main barrier to mutual recognition in this area is the fact that individual States and Territories licence the use of explosives, and do not recognise licences issued in other jurisdictions. Extensive negotiations would be necessary to achieve mutual recognition between Australian States and Territories, before mutual recognition between Australia and New Zealand is possible.

For further information, please contact:

Work Safety & Labour Policy
Public Sector & Labour Policy Group
ACT Chief Minister's Department
62076155

CHEMICALS, EXPLOSIVES AND GAS APPLIANCES

Clarification of "Chemicals"

The word chemical remains ambiguous. It has different meanings under various pieces of legislation. It may be useful to note these distinctions. Chemicals that are used in workplaces in both Australia and internationally are generally put into two categories. These are:

(i) hazardous substances which are categorised in accordance with their toxic health effects on human beings. Legislative coverage is generally under Occupational Health and Safety legislation, and predominantly deals with exposure of workers to these chemicals; and

(ii) dangerous goods which are categorised in accordance with their physical properties, for example their flammability or explosiveness. Legislative coverage is generally under Dangerous Goods legislation and coverage extends beyond workplaces.

Many chemicals fall into both categories.

Explosives And Inner Package Labelling

Currently explosives are an issue with inter-jurisdictional inconsistencies. A process is in place to develop a nationally consistent approach to explosive authorisation and mutual recognition. Unless there is a consistent approach to their use, fireworks may need to be excluded from the TTMRA.

The introduction of Global Harmonisation System (GHS) will require co-ordination of labelling requirements between the current regulators for dangerous goods, scheduled drug and poisons, hazardous substances and agricultural chemicals. This will resolve a specific issue of inner-packaging labelling.

Gas Appliances

A specific issue in relation to gas appliances is that different approval and labelling systems for gas appliances exist in Australia and New Zealand. In Australia gas appliances are required to be pre-approved and appropriately labelled through the Australian Gas Association Approval Scheme prior to sale. In New Zealand gas appliances are approved post sale via the established Quality Assurance systems.

For further information, please contact:

Regulatory Leadership
ACT WorkCover
62050315